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# ANNOTATIONS

UPON THE

## Revised Statutes of Canada

1906

BY

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## NOTE.

The compilers have endeavoured to set forth in these Annotations the whole body of judicial interpretation of the laws comprised in the Revised Statutes of Canada, 1906. While, from the nature of the undertaking, it is wholly an exposition of cases decided by the Canadian Courts and the Privy Council on appeal therefrom, yet in some instances cases expository of similar legislation in England are collated in the notes. Owing to the great expedition necessary in order to have the annotated edition issue contemporaneously with the official edition, the compilers crave the indulgence of the public if it appear that their work is not as free from errors and omissions as might have been the case if it had been more deliberately prepared.

Ottawa, March 1st, 1907.

E. R. C.

C. H. M.

C. M.



# ANNOTATIONS.

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## CHAPTER 1.

### Interpretation Act.

#### TIME OF COMMENCEMENT.

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#### RULES OF CONSTRUCTION.

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Title may be considered to ascertain intention: *O'Connor v. N. S. Telephone Co.*, 22 S. C. 276; *Reg. v. Washington*, 46 U. C. Q. B. 221.

Headings of divisions may be referred to: *Donly v. Holmwood*, 4 Ont. A. R. 555.

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Section 15 (Every Act remedial). Reference to language of Minister introducing bill to aid in construction: *Smith v. Belford*, 1 Ont. A. R. 436.

General words restricted to sense of particular: *Williams v. Town of Cornwall*, 32 O. R. 255.

Strict construction of Act in derogation of rights: *Re Ingersoll*, 16 O. R. 194.

Liberal of Act in terms remedial: *Trice v. Robinson*, 16 O. R. 433.

Court will enlarge rather than limit operation of Act to legalize dedication of property to laudable public purposes: *Butland v. Gillespie*, 16 O. R. 486.

Strict construction of Act disqualifying licensee from holding office: *Brine v. Booth*, 3 O. R. 144, per Armour, J.

Construction of penal statute: *Rex v. Mackintosh*, 2 O. S. 531; *N. Ontario Elec. Case*, *Hodg. Elec. Cas.* 304; *O'Grady v. Wiseman*, Q. R. 9 Q. B. 169; *Jones v. Hanford*, 2 Pugs. (N.B.) 467.

Interference with private rights. "Quoties in verbis nulla est ambiguitas, &c.:" *Kinney v. Plunkett*, 26 N. S. 158; *Francklyn v. People's Heat & Light Co.*, 32 N. S. 44.

Act permitting particular use of land not intended to prejudice common law rights of others: *C. P. C. v. Parke* (99), A. C. 535.

Taxing Act not construed differently from others: *The King v. Algoma Cent. Ry. Co.*, 32 S. C. 277. Customs Act construed: *Toronto Ry. Co. v. The Queen*, 25 S. C. 24; *O'Grady v. Wiseman*, Q. R. 9 Q. B. 169.

Construction not to be aided by reference to debates: *Gosselin v. King*, 33 S. C. 255 (*Taschereau, C.J.*); *Re Branch Lines, C. P. Ry.*, 36 S. C. 42. But see judgment of Mills, J., in *Re Representation of New Brunswick in House of Commons*, 33 S. C. 575; *Toronto Ry. Co. v. The Queen*, 4 Ex. C. 262.

Interpretation of statutory Code by reference to earlier law and decisions only justified on some special ground: *Robinson v. C. P. Ry. Co.* (1892) A. C. 481.

In construing a revenue Act regard may be had to general fiscal policy: *Toronto Ry. Co. v. The Queen*, 4 Ex. 262; 25 S. C. 24; (1896) A. C. 551?

Section of Criminal Code paraphrased: *The Queen v. Egan*, 11 Man. 134.

Construction of subsections: *Washington v. G. T. Ry. Co.*, 24 Ont. A. R. 183, reversed by 28 S. C. 184; (1899) A. C. 275; *Bain v. Anderson*, 28 S. C. 481; *City of Ottawa v. Hunter*, 31 S. C. 7.

Last subsection not expression of latest mind of Parliament: *City of Ottawa v. Hunter*, *supra*.

Criminal Code—*Noscitur a sociis*: *The Queen v. France*, Q. R. 7 Q. B. 83.

Interpretation of Election Acts: *Hearn v. McGreevy*, 13 Q. L. R. 322.

Section 16 (Binding Crown). Statute affecting rights of the Crown must be pleaded: *Sydney & Louisburg Coal & Ry. Co. v. Sword*, 21 S. C. 152.

The King is not comprehended in enactments under the word "party:" *Reg. v. Davidson*, 21 U. C. Q. B. 41; *Reg. v. Benson*, 2 Ont. P. R. 350.

Crown cannot be claimant under Ontario Interpleader Act: *McGee v. Baines*, 3 U. C. L. J. 151.

For provincial purposes the Government of a Province exercises the Crown prerogatives: *Liquidators of Maritime Bank v. Receiver-General of N. B.*, 27 N. B. 379; 20 S. C. 695; 8 Times L. R. 677.

Section not qualified by any exception such as "that the King is impliedly bound by statutes passed for the general good . . . or to prevent fraud, injury or wrong:" *The Queen v. Pouliot*, 2 Ex. C. 49.

Section 18 (Repeal). Of special by general Act not implied: *City of Vancouver v. Bailey*, 25 S. C. 62.

Section 19 (Effect of repeal). Procedure under repealed Act: *The Queen v. Sailing Ship Troop Co.*, 29 S. C. 662.

C. T. Act, 1878—Information and conviction after R. S. C. 1886, were in force—Offence before and offence after: *Reg. v. Durnion*, 14 O. R. 672.

Section 21, s. 4 (Re-enactment). Law of construction of Dominion Acts was previously the same: Per Patterson J., *Davidson v. Ross*, 24 Gr. 22, at p. 79.

Under same provision in Ontario Act re-enactment must be construed as repealed Act: *Crain v. Trustees Collegiate Institute of Ottawa*, 43 U. C. Q. B. 498.

Section 22 (Amendment). Statutory limitation not applicable to enforcement of more extensive rights under amendment: *Reg. v. G. W. Ry. Co.*, 14 U. C. C. P. 462.

Railway Act, 1868, did not apply to G. W. Ry. Co., but an amending Act in 1871 was made applicable to all railways in Canada. Held that a section of the original amended by the later Act did not apply to the G. W. Ry. Co.: *Allan v. G. W. Ry. Co.*, 33 U. C. Q. B. 483.

Criminal Act amended—Abolition of distinction between felony and misdemeanour: *The Queen v. Cameron*, Q. R. 6 Q. B. 158.

Section 31, s.-s. (a) (General rules). Perjury in proceedings before magistrate acting beyond territorial jurisdiction: *Drew v. Thwing*, 33 S. C. 228.

Section 34, s.-s. 2 (Commencement). See s. 7.

Section 34, s.-s. 20 ("Person"). Municipality a "person" interested under Railway Act, 1888, ss. 187, 188: *City of Toronto v. G. T. Ry. Co.*, 37 S. C. 232.

See *Ottawa Electric Ry. Co. v. City of Ottawa*, 37 S. C. 354, as to company "interested or affected."



Section 34, s.-s. 24 ("Shall" and "may"). Enactment that "shall" is to be construed as imperative only declaratory of rule judicially established: *Lincoln Election Case*, 2 Ont. A. R. 324. And see *Matton v. The Queen*, 5 Ex. C. 401.

In enacting that a thing may be done which is for the public benefit "may" is held to be imperative: *Ex parte Gilbert*, 1 Pugs. 231; *Aitcheson v. Mann*, 9 Ont. P. R. 473.

The words "may convey" in 36 V. c. 48, s. 426 (Ont.) are compulsory: *Cameron v. Wait*, 3 Ont. A. R. 175.

A statute providing that municipal corporations may pass by-laws in relation to matters enumerated does not prevent them exercising their jurisdiction otherwise: *Bernardin v. North Dufferin*, 19 S. C. 581; *Dwyer v. Port Arthur*, 21 O. R. 175.

"Shall" in Criminal Code, 1892, s. 645: *The Queen v. Buchanan*, 12 Man. 190; *The Queen v. Townshend*, 28 N. S. 468.

# AN NOTATIONS.

## CHAPTER 6.

### Dominion Elections Act.

#### VOTERS' LISTS.

Section 8 (New lists). Duties of officers appointed to prepare new lists: *Re West Algoma Voters' Lists*, 8 Ont. L. R. 533.

High Court of Justice may prohibit persons assuming to exercise judicial functions without authority: *Ibid.*

#### QUALIFICATION.

Section 10 (Voter). Person's name being on the list not conclusive of his right to vote: *N. Victoria Case*, *Hodg.* 584.

Inquiry into assessment qualifying voter: *Ibid.* *N. Simcoe Case*, *Hodg.* 617.

A freeholder on the list as a farmer's son may vote as a freeholder: *Prescott Case*, *Hodg.* 780.

Corrupt practices, except under s. 271, do not deprive offender of right to vote: *Beauharnois Case*, 4 Que. P. R. 23.

#### DISQUALIFICATION.

Section 70 (Disqualification as candidate). A member of a provincial legislature by entering into a contract with the Government of the Province whereby his seat was vacated, becomes eligible for election to the House of Commons: *Prince Case*, 14 S. C. 265.

A Returning Officer who attempts to resign but does not take the proper course, is ineligible as a candidate: *Le Boutillier v. Harper*, 1 Q. L. R. 4.

Though he remains R. O. de jure, the election clerk assigned to act for him is R. O. de facto and his acts are not null: *Ibid.*

Payment with knowledge of candidate immediately after judgment avoiding election of illegal accounts to influence voters at new election disqualified said candidate at latter: *Owens v. Cushing*, 20 L. C. J. 86. And see *Benoit v. Jodoin*, 19 L. C. J. 185, 332.

Evidence to disqualify should be such as would justify conviction on indictment: *Ryan v. Devlin*, 20 L.

C. J. 77. And see *Lisgar Case*, 13 Man. 478; *Centre Wellington Case*, Hodg. 579; *St. James Case*, 33 S. C. 137.

Promise of employment: *Welland Case*, 20 S. C. 376.

#### OATH.

Section 82 (Oath by R. O.) Failure of Returning Officer to take oath of office will not annul election nor defeat prosecution for penalty: *The Queen v. Forget*, 1 L. N. 542.

#### ELECTION CLERK.

Section 85 (Duties). The acts of an election clerk as Returning Officer, when the R. O. has attempted to resign to be a candidate, but has not taken the proper steps, are not null and the election is not void thereby: *Le Boutillier v. Harper*, 1 Q. L. R. 4.

#### NOMINATIONS.

Section 94 (Form). The Returning Officer is both a ministerial and judicial officer, and if a candidate is undoubtedly not qualified, or a nomination paper is substantially defective on its face, he may refuse the nomination. But where the nomination paper was bona fide and the signers all believed to be qualified, it was wrongfully rejected when the Returning Officer discovered, by comparison with the official copies, that one of the twenty-five signers was not on the voters' list for the election: *S. Renfrew Case*, Hodge. 705.

Refusal of R. O. to receive nominations for want of proper lists: *Nipissing Case*, 37 C. L. J. 355.

#### POLLING.

Section 148 (Name on list). Elector on voters' list entitled to ballot without non-residents' oath, though residing and having a vote in another Province: *Anderson v. Hicks*, 37 C. L. J. 857; 35 N. S. 161.

Section 153 (Oath by elector). Refusal by freeholder on list as farmer's son to take farmer's son's oath not refusal to take oath required by law: *Prescott Case*, Hodg. 780.

#### VOTING.

Section 160 (Initialling ballot). A ballot on which the voter's number was placed instead of on the counterfoil must be rejected: *Bothwell Case*, 8 S. C. 676; *Wentworth Case*,

36 S. C. 497; *E. Hastings Case*, Hodg. 764. And see *Soulanges Case*, 10 S. C. 652.

But where D. R. O. at instigation of a candidate's agent had numbered certain ballots and afterwards with assent of both agents taken them from the box and erased the numbers, the ballots were counted: *Bothwell Case*, 8 S. C. 676.

If ballots are refused qualified voters whose names are by mistake omitted from the list, their votes may be added at the trial, if it can be shewn for whom they intended to vote: *N. Victoria Case*, Hodg. 671.

Failure by D. R. O. to initial ballot does not necessarily invalidate it: *Queen's (P. E. I.) Case*, 7 S. C. 247. And see *Muskoka and Parry Sound Case*, 18 C. L. J. 304; *White v. Mackenzie*, 20 L. C. J. 22.

**Section 162 (Voting).** Votes rejected for being numbered as in Provincial election: *Wentworth Case*, 36 S. C. 497.

Valid ballots. Two crosses, one on line above first and one on line above second name, valid for two first named candidates. Two crosses, one on line above first name and one on line dividing second and third compartments, valid for first named candidate. Ballots properly marked in two compartments with slight lead pencil stroke in another. Ballots marked in proper compartment, thus, ✕: *Queen's (P. E. I.) Case*, 7 S. C. 247.

Cross just after candidate's name but in same column. With ill-formed cross, or small lines at ends, or line across centre or a limb, or with curved line like blades of anchor: *N. Victoria*, Hodg. 671. Irregular mark in figure of cross so long as it does not lose form of cross. To right of name but not in proper dept. Cross rightly placed with two others, one across and other to left of name. Double or two crosses. Inadvertent marks. Cross made with ink. Cross on back of ballot: *Monck Case*, *supra*.

Ballots with imperfect cross, or more than one, or inverted V or cross not directly opposite name, counted good: *Bothwell Case*, 8 S. C. 676.

Invalid ballots. Cross on back of ballot opposite proper place on printed side. Ballots marked with an X: *Queen's (P. E. I.) Case*, 7 S. C. 247.

Cross must be unmistakeably above or below the line: *Haldimand Case*, 15 S. C. 495.

With single stroke. With cross and candidate's name. With cross and marks by which voter might be identified though not placed there for the pur-

pose. With number of lines. With cross for each candidate: *North Victoria Case*, Hodg. 671. Single stroke. Any mark containing in itself means of identifying voter. Cross elsewhere than at right of name. Two single strokes not crossing: *Monck Case*, Hodg. 725.

Cross to left or below name. Two distinct crosses. Mark that might identify: *White v. Mackenzie*, 20 L. C. J. 23.

Section 166 (Illiterate voter). Ballots marked by D. R. O. without swearing voter or marked in presence of agents and others, irregular: *Hickson v. Abbott*, 25 L. C. J. 289.

#### ADDITION BY R. O.

Section 183. Returning officer cannot reject votes cast for one candidate for defect in nomination: *Ex parte Baird*, 29 N. B. 162.

#### RECOUNT.

Section 193 (By Judge). A Superior Court has no jurisdiction to enjoin the proceedings for recount or final addition of the votes cast at an election: *McLeod v. Noble*, 28 O. R. 528; 24 Ont. A. R. 459.

Such an injunction, being extra-judicial and void, may properly be disobeyed: *Ibid.*

And the court cannot by mandamus compel the Judge to proceed with the recount: *Centre Wellington Case*, 44 U. C. Q. B. 132.

Qu. Can the judge on a recount object to the validity of a ballot when no such objection was made at the time the votes were counted by the D. R. O.? : *Queen's (P. E. I.) Case*, 7 S. C. 247.

Where Returning Officer rejected all votes cast for one candidate as not properly nominated, there cannot be recount: *Ex parte Baird*, 29 N. B. 162.

Recount is not judicial but ministerial proceeding: *Meigs v. Comeau*, Q. R. 10 Q. B. 56; 3 Que. P. R. 307.

No appeal to Queen's Bench from Judge's order: *Ibid.*

Judge not obliged to act at chef-lieu of district: *Ibid.*

#### SECRECY.

Section 226 (Disclosure). Secrecy of ballot an absolute rule of public policy which cannot be waived: *Haldimand Case*, 1 Ont. E. C. 529; *Wentworth Case*, 36 S. C. 497.

But voter may disclose name of candidate for whom he voted: *N. Victoria Case*, Hodg. 671.

In prosecution of D. R. O. for ballot stuffing voters may be required to state for whom they voted: *Reg. v. Saunders*, 11 Man. 550.

## ELECTION EXPENSES.

**Section 239 (Claims).** The Crown is not bound by this section: *The Queen v. Pouliot*, 2 Ex. R. 49.

Section 279 does not prevent an action for work done under this section: *Guerin v. Taylor*, Q. R. 3 Q. B. 86; *Rev. 2 S. C. 288*.

**Section 274 (Statement).** Failure of candidate to furnish statement raises presumption of intention to spend money corruptly: *Bellechase Case*, 6 Q. L. R. 100 at p. 113. Per *Taschereau J.* Personal expense of candidate should be included in statement: *Bellechasse Case*, 5 S. C. 91: *Terriault v. Ducharme*, 24 L. C. J. 320.

Payment for expenses of *orateurs* not included in statement, in absence of proof of their identity and services, avoids election: *Benoit v. Jodoin*, 19 L. C. J. 185, 332.

But payment of agent's legitimate expenses is not corrupt: *Lisgar Case*, 13 Man. 478.

Nor omission in statement of direct payments by respondent: *Ibid*.

## PENALTIES.

**Section 249 (Neglect of duty).** Where plaintiff by statement of claim elects to take common law action and examines defendant on discovery, he cannot amend by adding claim for penalty under this section, especially if a year has elapsed since act was committed: *Rose v. Croden*, 3 Ont. L. R. 383.

**Section 255 (Forgery, &c.).** Prosecution for offence may be taken under s. 293: *The Queen v. Forget*, 1 L. N. 542.

In prosecution of D. R. O. for ballot stuffing voter may be required, notwithstanding s. 226, to state for whom he voted: *Reg. v. Saunders*, 11 Man. 559.

## AGENCY.

**Sections 265-278.**

Law of election agency cannot be defined, but is an elastic law to be moulded for requirements of each case: *N. Ontario Case*, *Hodg.* 785.

Agency of Provincial Government: *W. Huron Case*, 1 O. R. 433.

Parliamentary law of agency is special and principal may be liable for agent's acts, though contrary to his express instructions: *Cornwall Case*, *Hodg.* 547; *Joliette Case*, 12 L. N. 13; *Chambly Case*, 19 L. C. J. 185; 332; but see *Lisgar Case*, 14 Man. 310.

But not for acts beyond authority of agent whose powers are expressly limited: *Berthier Case*, 9 S. C. 102.

Agency established by proof of political affiliation, activity at elections and recognition as supporter by leaders of party: *Haldimand Case*, 17 S. C. 170; 1 Ont. E. C. 572.

All active members of political association agents: *W. Prince Case*, 27 S. C. 241.

And of candidate's committees: *E. Northumberland Case*, *Hodg.* 577; *N. Ontario Case*, *Hodg.* 785; *Lisgar Case*, 14 Man. 310.

Principal responsible for acts of sub-agents: *Charlevoix Case*, 5 S. C. 133; *Niagara Case*, *Hodg.* 568; *Cornwall Case*, *Hodg.* 547; *Hickson v. Abbott*, 25 L. C. J. 290.

Agents appointed by candidate's committee: *Cornwall Case*, *Hodg.* 547.

Candidate responsible for acts of volunteer accepted as worker at election: *Cornwall Case*, *Hodg.* 803. And of scrutineer at polling place by his written authority: *Haldimand Case*, 1 Ont. E. C. 529. But see *S. Norfolk Case*, *Hodg.* 660.

#### CORRUPT PRACTICES.

Section 265 (Bribery). Where candidate's agent receives and spends large sums, rendering no account, corrupt practices will be presumed: *Levis Case*, 11 S. C. 133, affirming 10 Q. L. R. 247. But see *Kingston Case*, *Hodg.* 625.

Imperial and Dominion Election Acts as to corrupt practices and their consequences compared and considered: *Kingston Case*, *Hodg.* 625.

Failure of candidate to furnish a return of expenses raises presumption that he intended to spend money illegally: *Bellechasse Case*, 6 Q. L. R. 100, at p. 113.

As to allegations in petition: *Pictou Case*, *Russ. E. R.* 14.

Where a candidate's agent bets with a voter that the latter will vote against the candidate, it is colourable bribery and avoids the election if the vote is not cast: *W. Northumberland Case*, 10 S. C. 635, reversing 2 Ont. Elec. Cas. 32.

A supporter of one candidate during the election informed relatives opposed to him that the candidate

had promised to try and secure a position for one of them, and that it might jeopardize it if they voted against him. Held, not bribery: *Jacques-Cartier Case*, 2 S. C. 216.

Nor were gifts and subscriptions by a candidate to charitable purposes with no proof of corrupt intent nor payment of his just debt without such proof: *S. Ontario Case*, 3 S. C. 641.

But a gift for public purposes made to influence a voter is a corrupt practice: *Megantic Case*, 9 S. C. 279.

Candidates and agents should select less suspicious seasons than election time for liberality to charitable and religious objects: *S. Huron Case*, *Hodg.* 576; 24 U. C. C. P. 488.

The colourable employment of voters as policemen on election whereby they changed their votes in favour of the candidate whose agent employed them, avoided the election: *Charlevoix Case*, 5 S. C. 133, reversing 10 R. L. 651.

Payment by agent to a voter who claimed the sum was due for expenses at a previous election and refused to vote until paid, a corrupt practice: *Levis Case*, 11 S. C. 123, following *Selkirk Case*, 4 S. C. 494.

Bribery not confined to actual giving of money. May be by excessive price paid for work or goods: *Cornwall Case*, *Hodg.* 547. But paying \$5 to a carter for a trip taking 28 hours in a heavy snowstorm, not corrupt Act: *Mercier v. Amyot*, 8 Q. L. R. 33.

Both giver and receiver of bribe may be indicted: *N. Victoria Case*, *Hodg.* 584.

Money given by candidate's agent to workers in election, without instructions, if improperly applied must be deemed as intended to be so applied: *Cornwall Case*, *Hodg.* 547. And see *Kingston Case*, *Hodg.* 625.

Colourable purchases from voter by agents is bribery: *Cornwall Case*, *Hodg.* 803.

A single bribed vote brought home to a candidate throws doubt on his whole majority and annuls his return: *N. Victoria Case*, *Hodg.* 584.

Evidence of offer to bribe must be stronger than that of bribery itself: *N. Victoria Case*, *Hodg.* 612; *N. Ontario Case*, *Hodg.* 785.

Promise to pay debt after election, not made to procure votes but to silence criticism, is not bribery: *N. Ontario Case*, *Hodg.* 785; *Hickson v. Abbott*, 25 L. C. J. 289; *Mercier v. Amyot*, 8 Q. L. R. 33.

And see *Montcalm Case*, 9 S. C. 93; 12 R. L. 226; *N. Renfrew Case*, *Hodg.* 710; *S. Huron Case*, *Hodg.* 576.



Hiring public houses to hold meetings in interest of candidate not necessarily a corrupt act: *Kingston Case*, Hodg. 625.

Paying \$3 for use of voter's house to hold a political meeting not corrupt: *Mercier v. Amyot*, 8 Q. L. R. 33.

Charge of promise not substantiated: *Halton Case*, Hodg. 736; *S. Ontario Case*, Hodg. 751; *N. Ontario Case*, Hodg. 785; *Mercier v. Amyot*, 8 Q. L. R. 33.

Payment by candidate of canvasser's note not shewn to have corrupt motive: *Selkirk Case*, 4 S. C. 494.

As to paying canvassers and public speakers: see *N. Ontario Case*, Hodg. 785; 4 S. C. 430.

Section 266 (Treating). Giving liquor to an elector during an election and at same time asking him to vote for a particular candidate, is corrupt treating: *W. Prince Case*, 27 S. C. 241. And see *W. Northumberland Case*, 10 S. C. 635.

Without reference to statutory provisions an election is avoided if treating is carried on to an extent that amounts to bribery and undue influence of a character to affect the result: *N. Victoria Case*, Hodg. 584.

And see *W. Northumberland Case*, 10 S. C. 635; *Haldimand Case*, 17 S. C. 170.

In view of the general practice of drinking in a friendly way a Judge would require strong evidence of profuse expenditure for liquor to induce him to hold that it was done corruptly: *Kingston Case*, Hodg. 625. And see *N. Norfolk Case*, Hodg. 660; *E. Elgin Case*, Hodg. 769; *Lisgar Case*, 14 Man. 310.

Giving free dinners to voters from a distance in severe weather not proved to be done to influence their votes, not a corrupt act: *N. Victoria Case*, Hodg. 671. And see *N. Ontario Case*, Hodg. 785; *Mercier v. Amyot*, 8 Q. L. R. 33.

But treating voter several times after urging him to vote for respondent is corrupt: *N. Ontario Case*, Hodg. 785. But scrutineer treating D. R. O., poll clerk and another with liquor which he carried with him is not: *Ibid.*

Section 269 (Undue influence). Election avoided by undue influence of clergymen: *Charlevoix Case*, 1 S. C. 145.

Threatening voters reported for corrupt practices at a previous election with punishment if they voted at the election pending, is intimidation which avoids the election, as does also an agreement between the candidate's

agent and the D. R. O. not to mark their ballots: *Soulanges Case*, 10 S. C. 652, reversing 7 L. N. 220.

Without reference to statutory provisions an election is void if undue influence of a character to affect the result is resorted to and treating to an extent that amounts to bribery: *N. Victoria Case*, *Hodg.* 584.

Undue influence by Provincial Government: *W. Huron Case*, 1 O. R. 433.

Employer sending men to polls without charging for lost time, a corrupt act: *Hickson v. Abbott*, 25 L. C. J. 289.

Also dismissing employee after voted against employer's candidate: *Ibid.*

Threatening a voter is an offence irrespective of its effect: *Mercier v. Amyot*, 8 Q. L. R. 33.

Section 270 (Conveying voters). Hiring team to convey voters to polls an offence, though they are not so conveyed: *Selkirk Case*, 4 S. C. 494, followed in *Lewis Case*, 11 S. C. 133.

Agent furnishing tickets or passes to convey voters by railway to the polls, not guilty of corrupt practice if same are supplied by Railway Co. without payment: *Berthier Case*, 9 S. C. 102; *Lisgar Case*, 14 Man. 310. But see *Christie v. Abbott*, 25 L. C. J. 289.

Payment by agent after election to voter of money to pay for team which conveyed voter, not corrupt act when nothing was arranged beforehand about payment: *Halton Case*, *Hodg.* 736. And see *N. Victoria Case*, *Hodg.* 612.

But agent appointed to procure a certain voter is guilty of corrupt act by hiring vehicle to convey such voter to the polls: *N. Ontario Case*, *Hodg.* 785.

It is a corrupt practice for a member of a firm of livery stable keepers to convey voters to the polls in carriages of the firm, and, pursuant to the partnership agreement, accounting to his partner for half the hire thereof: *W. Middlesex Case*, 1 Ont. Elec. Cas. 465.

As to bona fide loan of cost of ticket to travel to polling place, see *E. Elgin Case*, 1 Ont. Elec. Cas. 475.

But see *N. Perth Case*, 20 S. C. 331, where loan was colourable.

Section 271 (Hiring). Should be construed strictly: *Beauharnois Case*, 4 Que. P. R. 23.

Offender against section cannot be petitioner: *Cumberland Case*, 36 S. C. 543.

Section 272 (Personation). Bail on prosecution: *Reg. v. Stewart*, 4 Can. C. C. 131.

Section 274 (Subornation of perjury). Agent insisting on voter taking oath as farmer's son as he was registered when by his father's death before final revision of list he is in fact owner, is subornation: *Haldimand Case*, 15 S. C. 495.

Section 278 (Construction of term "wilful"): *Halton Case*, *Hodg.* 736.

An offence against a statute may be "wilful" though the offender did not know he was violating the law: *Selkirk Case*, 4 S. C. 494, at p. 503. And see *Halton Case*, *Hodg.* 736.

#### CONTRACTS.

Section 279. Promissory note, proceeds of which were to be given to agent for use as a portion of election fund, is void: *Dansereau v. St. Louis*, 18 S. C. 587.

The Crown is not bound by this section: *The Queen v. Pouliot*, 2 Ex. R. 49.

Though action on contract is barred by this section, it may lie on quantum meruit for service performed under the contract: *Guerin v. Taylor*, Q. R. 3 Q. B. 86. And see *Workman v. Herald Printing Co.*, 9 R. L. 305; 21 L. C. J. 268; *Jalbert v. De Lery*, 5 Q. L. R. 297.

Action for use of cabs on election dismissed though plaintiffs were not electors and had not driven voters, and no proof that defendant was an agent: *Bradford v. Driscoll*, 5 Q. L. R. 70.

But vendor of liquor bought to treat voters may recover if he did not know of such purpose: *Couture v. DeLery*, 7 R. L. 577.

Section 280 (Bribery by candidate). Candidate who, in under-hand manner, slipped \$5 in voter's pocket without stating why it was given and who did not include it in his statement of expenses required by the Act, was found guilty of personal bribery: *Bellechasse Case*, 5 S. C. 91, affirming 6 Q. L. R. 100.

Candidate disqualified for promising a voter that he would find him a situation to induce him to vote and fulfilling the promise: *Welland Case*, 20 S. C. 376.

Assent of candidate to corrupt acts of agents may be assumed from non-interference or objection when he has opportunity: *London Case*, *Hodg.* 560; 24 U. C. C. P. 434.

Knowledge and assent may be established without connecting him with any particular act: *Ibid.*

Where disqualification of candidate is sought he must be found guilty by the kind of evidence that applies to penal proceedings: *Kingston Case*, *Hodg.* 625. And see *Niagara Case*, *Hodg.* 568; *Cornwall Case*, *Hodg.* 647.

Before the judges find a respondent or other person guilty of corrupt practices involving a personal disability, they should be free from reasonable doubt: *Centre Wellington Case*, *Hodg.* 579. And see *St. James Case*, 33 S. C. 137; *Lisgar Case*, 13 *Man.* 478.

#### PROCEDURE.

**Section 284 (Penalties).** This enactment is valid notwithstanding the jurisdiction of Provincial Legislatures over "property and civil rights:" *Doyle v. Bell*, 32 U. C. C. P. 632; 11 *Ont. A. R.* 326.

Procedure is that of Province in which action is brought: *Joyal v. Safford*, 25 *L. C. J.* 166.

An action under this section cannot be maintained in Ontario by an infant suing by next friend: *Garrett v. Roberts*, 10 *Ont. A. R.* 650.

Such action should be accompanied by an affidavit as if brought *qui tam*: *Legris v. Cornellier*, *M. L. R.* 1 S. C. 490; *Rouleau v. Lalonde*, *ibid.* 408; *Lavoie v. Racine*, 5 *Q. L. R.* 349.

**Section 293. (Prosecution).** Authorizes prosecution for ballot stuffing: *The Queen v. Forget*, 1 *L. N.* 542.

Prosecution not defeated by failure of Returning Officer to take the oath prescribed: *Ibid.*

If Returning Officer is unable to act election clerk may certify the return: *Ibid.*

#### LIMITATION OF PROSECUTIONS.

**Section 307.** As to delay in proceeding with action for penalty: See *Miles v. Roe*, 10 *Ont. P. R.* 218.

Statement of claim in common law action will not be amended to claim statutory penalty after expiration of a year from commission of act, though writ was indorsed for such penalty: *Rose v. Croden*, 3 *Ont. L. R.* 383.

# ANNOTATIONS.

## CHAPTER 7.

### Dominion Controverted Elections Act.

#### PETITIONS.

Section 5 (Right to petition). When the right to petition is attacked by preliminary objection, the burden of establishing it is on the petitioner: *Stanstead Case*, 20 S. C. 12; *Bellechasse Case*, 20 S. C. 181. And see *Megantic Case*, 8 S. C. 169.

Status may be established by the Returning Officer producing the original list of voters and proving that petitioner's name is on it, though, as neither party so requested, such list was not filed: *Megantic Case*, 9 S. C. 279.

Omission to state residence, address and occupation of petitioner may be remedied by amendment: *Lisgar Case*, 20 S. C. 1, reversing 7 Man. R. 581. And see *Glengarry Case*, 20 S. C. 38.

Status should be established by production of the voters' list actually used at election or a copy certified by Clerk of the Crown in Chancery. Copy certified by Revising Officer and not compared with list actually used is insufficient: *Richelieu Case*, 21 S. C. 168; and see *Winnipeg Case*, 27 S. C. 201; *Two Mountains Case*, 31 S. C. 437; *Provencher Case*, 13 Man. 444.

Status cannot be proved by oral evidence: *Magnan v. Dugas*, 12 R. L. 226.

It may if evidence is given without objection: *Yukon Case*, 37 S. C. 495.

An agreement between the petitioner and the political association with which he was allied that the latter would pay the costs of the petition is not champertous and would not prevent him from proceeding with the petition if it were: *N. Simcoe Case*, Hodg. 617; *Megantic* and other cases, 19 L. C. J. 1.

And a qualified voter may petition though he was guilty of bribery, treating and undue influence during the election: *Ib.*, *S. Huron Case*, 29 C. P. 301.

And though he was reported by the judge at a former election as guilty of corrupt practices: *Cornwall Case*, Hodg. 803; *White v. Mackenzie*, 19 L. C. J. 113.

If not provided for by rules when petitioner claims seat he must file and serve particulars of votes to be objected to according to practice in England: *Goyer v. Coupal*, 8 R. L. 80.

Petition not entertained by person claiming to be candidate when nomination refused for want of proper lists and new writ issued: *Nipissing Case*, 37 C. L. J. 355.

**Section 6 (Affidavit).** On hearing on preliminary objections respondent is not entitled to examine petitioner as to grounds of his belief in the truth of allegations in the petition: *Lunenburg Case*, 27 S. C. 226. But if affidavit not true petition will be stayed: *Marquette Case*, 11 Man. 381.

Petition need not be annexed to nor identified by affidavit: *Ib.*

Objection to regularity of subscription to jurat not ground for preliminary objection: *Two Mountains Case*, 31 S. C. R. 437; *Bailey v. Hunt*, Q. R. 27 S. C. 84.

Where affidavit is not read to petitioner, who does not understand its contents, and it is untrue, it is an abuse of process justifying dismissal of petition: *Alexander v. McAllister*, 34 N. B. 163.

Swearing that allegations in petition are true "to the best of my knowledge" is not sufficient: *Lemieux v. Paquet*, Q. R. 27 S. C. 159.

#### PRESENTATION.

**Section 11 (Form of petition).** It is no objection to a petition that it is too general if it follows the form always used in the Province: *Lunenburg Case*, 27 S. C. 226; see *Pictou Case*, Russ. E. L. R. 14.

Improper alteration of petition after it is filed: *Lincoln and Niagara Case*, 1 Ont. E. C. 428.

Petition may be signed by attorney of petitioner: *Barras v. Guay*, 12 Q. L. R. 133.

Petition dismissed for want of necessary allegation: *Gloucester Case*, 31 N. B. 533.

Petition may allege that respondent was not duly nominated and claim seat: *N. Ontario Case*, 31 S. C. 314.

**Section 12 (Time).** If last day for presenting petition is non-judicial, it may be presented on first juridical day after: *Nicolet Case*, 29 S. C. 178.

If the seat is not claimed, the cross-petitioner must deposit security: *Somerville v. Laflamme*, 21 L. C. J. 240.

Section 13 (Filing). With petition copy must be left with clerk for R. O.: *Lisgar Case*, 20 S. C. 1; *Burrard Case*, 8 B. C. 65, affirmed 31 S. C. 459.

Section 14 (Security). If petition drops owing to Parliament being dissolved, deposit should be returned to petitioner even after judgment against him if an appeal is taken therefrom: *Halton Case*, S. C. Dig., p. 516.

Where a petition is filed against two members elect, the deposit of one sum of \$2,000 is good when the notice of presentation and deposit states that security has been given of \$1,000 for each respondent, "in all \$2,000." *Queen's (P. E. I.) Case*, 20 S. C. 26.

Deposit of Dominion bank note for \$1,000 sufficient: *Argenteuil Case*, 20 S. C. 194.

The money may be deposited with the deputy of the clerk of the Court: *lb.*; *Shelburne and other Cases*, 20 S. C. 169.

Security properly given by payment into bank to credit of cause: *N. York Case*, *Hodg.* 749.

Money may be legally deposited by others on behalf of petitioner and returned to them when its purpose is served. A creditor of petitioner has no claim on it in such case: *Halton Case*, 12 C. L. T. Occ. N. 33.

As to deposit remaining as security for costs of substituted petitioner under s. 78 (4): *Kingston Case*, 30 U. C. C. P. 389.

If petition is withdrawn by consent and deposit returned Judge cannot order re-filing: *Commeau v. Burns*, 22 N. B. 573.

Section 16 (Publication). Failure by Returning Officer to publish notice of presentation of petition does not prevent Court from fixing day for trial: *Beaupré v. Baby*, 6 R. L. 745.

Section 17 (Service). This enactment and Art. 57 C. C. P. of Quebec do not authorize service at respondent's law office on ground floor of his residence to which there is a separate entrance, by delivering a copy to his partner not a member of, nor resident with, his family: *Montmagny Case*, 15 S. C. 1.

But leaving copy at residence of respondent with adult member of his family is good service, though it does not come into his possession: *Kings (N. S.) Case*, 19 S. C. 526; *Haldimand Case*, 1 Ont. E. C. 480.

In Quebec a bailiff's return of service by leaving true copies "duly certified" with the sitting member is sufficient. It need not state who certified the copies:

Beauharnois Case, 27 S. C. 232. And see Missisquoi Case, 6 Que. P. R. 372.

Copy served may be certified by petitioner: *Goyer v. Coupal*, 6 R. L. 229. Or by his attorney: *Gouin v. Malhiot*, 1 Q. L. R. 123.

Electors not parties to petition cannot have service set aside: *McLean v. Mills*, 29 N. S. 452.

If copy served omits material allegations of petition it is no service: *Rogers v. Wallace*, 24 N. B. 459. And if not properly served may be taken off file: *Ib.*; *Palmer v. Baird*, 29 N. B. 42.

Service at respondent's domicile when he is out of the Province is bad: *Gloucester Case*, 31 N. B. 533; *Palmer v. Baird*, 29 N. B. 42.

Service cannot be effected out of Canada: *King's (N. S.) Case*, 36 S. C. 520.

Service out of Canada being void does not invalidate subsequent service in Canada: *Shelburne-Queen's Case*, 36 S. C. 537.

Section 18. (Notice of presentation). Failure to serve fatal: *Bernatchez v. Lillois*, Q. R. 11 S. C. 360.

The fact that respondent is in Ottawa justifies ten days' extension of time for service of petition filed in Halifax: *Shelburne Case*, 14 S. C. 258.

Per *Ritchie C.J.*, and *Henry J.*: Election Court may make rules for service out of the jurisdiction: *Ib.*

Extension of time for service: *McAllister v. Reid*, 35 N. B. 390. After filing of objections to service: *Labelle v. Leonard*, 5 Que. P. R. 77.

Order for substituted service may be made after expiration of time for personal service: *York Case*, 35 N. B. 376. Also for personal service: *Sunbury and Queen's Case*, 35 N. B. 457.

#### PRELIMINARY OBJECTIONS.

Section 19 (Presentation). When petitioner's status is attacked by preliminary objection, the burden of proving it is on him: *Stanstead Case*, 20 S. C. 12; *Bellechasse Case*, 20 S. C. 181. And see *Megantic Case*, 8 S. C. 169.

Objection that petitioner was not in good faith, but his name was merely used by others, cannot be raised by preliminary objections: *N. Simcoe Case*, *Hodg.* 617.

Preliminary objections presented after prescribed five days are not void, but at most irregular, and while on files of Court petition is not at issue, and there can be no examination of parties: *Bothwell Case*, 9 Ont. P. R. 485.



In Quebec the hearing on preliminary objections should take place at the chef-lieu of the district: *Hills v. Christie*, 23 L. C. J. 266.

Objection to petitioner as disqualified under s. 271 may be raised by preliminary objection: *Cumberland Case*, 36 S. C. 543.

And see notes to s. 64.

Section 20 (Issue). The petition is not at issue so long as preliminary objections, even though irregularly presented, remain on files of Court: *Bothwell Case*, 9 Ont. P. R. 483.

Status of petitioner cannot be attacked in answer to petition: *N. Oxford Case*, 8 Ont. P. R. 526.

Embarrassing matter struck out of answer: *Ib.*

If order fails to specify place for trial it is void and no trial can be had, though notice of time and place is served on respondent, and he is present in court: *Ryan v. Devlin*, 19 L. C. J. 194.

#### PRELIMINARY EXAMINATION.

Section 21 (Parties). The preliminary examination of respondent may be postponed until after the session of Parliament: *Laprairie Case*, 20 S. C. 185.

#### TRIAL.

Section 37 (Bracketing petitions). The judges have a discretion either to bracket together petitions relating to the same election or return or to try them separately: *Vaudreuil Case*, 22 S. C. 1.

No appeal lies to the Supreme Court from refusal of judges to bracket them: *Ib.*

Section 38 (Place and mode). Trial cannot proceed unless order specifies place, though notice of time and place is served on respondent: *Ryan v. Devlin*, 19 L. C. J. 194.

Trial may proceed during Court vacation: *Ib.*; *Owens v. Cushing*, 20 L. C. J. 86.

After the trial is commenced, the Court may adjourn from time to time as seems convenient: *Joliette Case*, 15 S. C. 458.

Section 39 (Commencement of trial). Examination of two witnesses on the day fixed for trial followed by adjournment to a date beyond the time prescribed, is a sufficient commencement of the trial within the time: *Joliette Case*, 15 S. C. 458.

The time during which an appeal from judgment on preliminary objections is pending in the Supreme Court should not be counted as part of the six months within which the trial must be commenced: Where a Judge's order fixed the thirtieth juridical day after judgment on such appeal as the date for commencing it, such order operated as a stay of proceedings: *St. James Case*, 33 S. C. R. 137. And see *Halifax Case*, 37 S. C. 601.

The period occupied by a session of Parliament is not excluded in computing the time within which the trial must be commenced, unless it is shewn to the satisfaction of the Court that the respondent's presence is necessary: *Glengarry Case*, 14 S. C. 453; *Kingston Case*, 30 U. C. C. P. 389; *Algoma Case*, 1 Ont. E. C. 448; *Gazaille v. Audet*, 15 R. L. 604.

Where the Court orders the preliminary examination of the respondent to be postponed until after the pending session of Parliament, the period occupied by such session is not counted in computing the time within which the trial must be commenced: *Laprairie Case*, 20 S. C. 185.

Exclusion of time of session is for benefit of member—Trial will proceed during session if he undertakes to appear: *S. Perth Case*, 12 C. L. T. Occ. N. 317.

**Section 40 (Enlargement).** The time for commencing the trial of a petition cannot be enlarged after the prescribed period has expired: *Glengarry Case*, 14 S. C. 453; *O'Brien v. Caron*, 15 R. L. 697.

An order postponing the preliminary examination of respondent until after the pending session of Parliament operates as an enlargement of the time for commencing the trial until after the session: *Laprairie Case*, 20 S. C. 185. And see *Halifax Case*, 37 S. C. 601.

Where hearing on preliminary objections is pending an order enlarging the time for commencing the trial to a date named, but not fixing such date as that for commencing it, is valid, and the time for commencement may be named after the objections are disposed of: *Pontiac Case*, 20 S. C. 626.

That Lieutenant-Governor of Ontario was a necessary witness, and could not attend during sitting of Assembly, not sufficient ground for enlargement: *Glengarry Case*, 12 C. L. J. 117.

Application for enlargement must be supported by affidavit even when proceedings are stayed pending appeal: *Ray v. Mills*, 27 N. S. 1; *McGillivray v. Thompson*, 27 N. S. 11. But see *McColl v. Tupper*, 27 S. C. 27.

Order fixing day beyond the six months an enlargement: *Halifax Case*, 37 S. C. 601; *Beauharnois Case*, 32 S. C. 111, overruling *McGillivray v. Thompson*, 27 N. S. 11; *Emerson v. Ward*, 26 N. B. 532; *Baxter v. Foster*, 31 N. B. 559.

Sub-section 2 (Term of Court). Order fixing day for trial which was first day of term set aside: *Paint v. Gillies*, 26 N. S. 526; *Ray v. Mills*, 27 N. S. 1. But see *McCull v. Tupper*, 27 N. S. 27.

If six months expires during term of Court, and no enlargement, petition cannot be tried: *Ruel v. Temple*, 26 N. B. 569.

Section 43 (Evidence). At trial of petition evidence of corrupt practices at previous election may be admitted with a view to striking off the votes of those committing the same: *Cornwall Case*, *Hodg.* 647.

Section 45. (Witnesses). Commission to examine witnesses in foreign country may be issued in case of trial on election petition: *Cornwall Case*, *Hodg.* 803; 8 Ont. P. R. 84.

Section 49. (Recriminatory charges). Where the defeated candidate claims the seat, and recriminatory charges are brought, such charges should not be proceeded with if the claim to the seat is withdrawn, though a day is fixed for such inquiry and corrupt practices proved sufficient to avoid the election: *Joliette Case*, 15 S. C. 458. And see *Queen's (P.E.I.) Case*, 7 S. C. 247.

To get rid of recriminatory charges in a case in Quebec, the defeated candidate, if not a party, must intervene in the regular way: *Tremblay v. Guilbault*, 11 R. L. 523.

New Brunswick rules of procedure where seat is claimed: *Baird v. King*, 31 N. B. 189.

Section 50 (Corrupt votes). Votes cannot be struck off under this section unless the seat is claimed: *E. Elgin Case*, 4 Ont. A. R. 412.

But a Judge refused to strike out allegations of corrupt practices by defeated candidate not claiming the seat, when it was alleged that forty persons voted for respondent though not entitled to vote: *W. Huron Case*, 1 O. R. 433.

Qu. Could a person who voted without being entitled be compelled to state for whom he voted? *Ib.*

And see *N. Victoria Case*, *Hodg.* 584.

Section 51 (Corrupt acts). Election avoided for acts of agent contrary to candidate's instructions: *Benoit v. Jodoin*, 19 L. C. J. 185, 332.

Section 55 (Corruption proved). If evidence shows corrupt practices by respondent, Judges should so adjudicate, though petitioner was willing to withdraw the charge: *S. Renfrew Case*, *Hodg.* 556.

Section 56 (Exoneration at trial). Though candidate at public meetings had warned supporters against committing corrupt acts, if he did not also warn an agent whom he had taken to canvass with him, when there were matters that should have aroused his suspicions that the agent was acting unlawfully, he was not entitled to the benefit of this section: *West Prince Case*, 27 S. C. 241.

And in *Lisgar Case*, 13 *Man.* 478, exoneration was refused.

#### JUDGE'S REPORT.

Section 58 (Decision and certificate). A specific report on the charges mentioned in the petition and particulars is not necessary. A general finding that corrupt acts were proved is sufficient: *Pontiac Case*, 20 S. C. 626.

Difference between adjudication and report discussed: *Cornwall Case*, 11 C. L. J. 81.

Section 60 (Corrupt practices). Voters reported to Speaker as having been guilty of corrupt practices are not thereby disqualified from voting at a subsequent election: *Cornwall Case*, *Hodg.* 647.

But evidence of corrupt acts at previous election may be given with a view to striking off their votes: *Ib.*

Respondent not obliged to give evidence of expenditure at former election except to prove agency: *Shelburne-Queens Case*, 37 S. C. 604.

#### APPEALS.

Section 64 (To Supreme Court). Per Strong J.: An extremely strong case should be shown to induce the Court to allow an appeal from judgment on preliminary objections: *Shelburne Case*, 14 S. C. 258.

Rule setting aside order to extend time for service of petition is not a judgment order or decision on a preliminary objection: *King's (N. S.) Election Case*, 8 S. C. 192.

Nor a judgment restoring a petition ordered to be removed from the files: *Gloucester Case*, 8 S. C. 204.

An order by the Court below or a Judge not sitting at the time for the trial, granting or rejecting motion to dismiss petition on the ground that the trial was not begun within six months from its presentation, is not

appealable: *L'Assomption Case*; *Quebec County Case*, 14 S. C. 429.

But an order made at the trial of the petition overruling a like objection is: *Glengarry Case*, 14 S. C. 453.

Where trial Judges overruled an objection to proceeding with one of two petitions because they had not been bracketed, there was no appeal: *Vaudreuil Case*, 22 S. C. 1.

And none from a decision in Chambers striking out preliminary objections for not being filed in time: *West Assiniboia Case*, 27 S. C. 215.

For purposes of appeal, the preliminary objections must be those authorized by s. 19. Where a petition is dismissed because the affidavit accompanying it is untrue, there is no appeal: *Marquette Case*, 27 S. C. 219.

Judgment on an objection to the correctness of a clause in a substituted petition allowed to be filed when original was lost, is not a question raised by preliminary objection nor on the merits at the trial: *Two Mountains Case*, 32 S. C. 55.

Where a Judge by order fixed 30 days after judgment of the Supreme Court on preliminary objections for trial of petition, an appeal did not lie from his order made after such judgment was given interpreting the first and naming a definite date for the trial: *Beauharnois Case*, 32 S. C. 111.

A judgment dismissing a petition for want of prosecution within the prescribed six months is not appealable: *Richelieu Case*, 32 S. C. 118; *Cauchon v. Lange-lier*, 11 L. N. 83.

Where a preliminary objection was overruled at the hearing "without prejudice to the right of respondent to raise the same objection at trial of petition," and no appeal was taken from such judgment, held that the Judges at the trial of the petition had no jurisdiction to entertain it: *Prescott Case*, 20 S. C. 196.

An order fixing the thirtieth juridical day after judgment on appeal from the decision on preliminary objections, as the date for commencing the trial, operates as a stay of proceedings: *St. James Case*, 33 S. C. 137. And see *McDougall v. Davin*, 2 N. W. T. 417.

Appeals to the Supreme Court should be prosecuted diligently: *Two Mountains Case*, S. C. Dig. 531.

An appeal lies to the Supreme Court from a decision of the trial Judges, overruling an objection to their jurisdiction, on the ground that more than six months had elapsed from the date of presentation of the petition: *Glengarry Case*, 14 S. C. 453.

Objection to sufficiency of notice of trial cannot be relied on on appeal to the Supreme Court: *Pontiac Case*, 20 S. C. 626.

A charge that the petitioner was not in good faith, but that his name was merely used by other persons, cannot be raised by preliminary objections, but must be tried by the Judges: *N. Simcoe Case*, *Hodg.* 617.

Section 69 (Report on appeal). Registrar's report when appeal is abandoned: *L'Assomption Case*, 21 S. C. 29.

And where it drops owing to dissolution of Parliament: *Halton Case*, 19 S. C. 557.

#### PROCEEDINGS BY SPEAKER.

Section 70 (Speaker's action). New writ issued on report of Registrar that appeal is abandoned: *L'Assomption Case*, 21 S. C. 29.

#### COSTS.

Section 73 (General provisions). Where petitioners, after receipt before trial of notice from respondent admitting bribery by agents, proceeded on the personal charges which were not proved, they were only allowed costs as if they had accepted the notice: *W. Northumberland Case*, *Hodg.* 562.

An appeal from a judgment exonerating respondent on personal charges, though the election was avoided, was dismissed without costs, as there were strong grounds for presenting, and a judgment the other way would have been affirmed: *S. Huron Case*, 24 U. C. C. P. 488; *Hodg.* 576. And see *E. Elgin Case*, *Hodg.* 769; *Woodworth v. Borden*, 12 N. S. 571.

Costs allowed to each party on charges on which he succeeded: *N. Renfrew Case*, *Hodg.* 710; *Cornwall Case*, *Hodg.* 803.

Certain costs withheld from general costs allowed petitioner: *N. Victoria Case*, *Hodg.* 671; *Niagara Case*, *Hodg.* 568; *E. Northumberland Case*, *Hodg.* 577; *Hickson v. Abbott*, 25 L. C. J. 289.

Respondent ordered to pay costs of inquiry which failed as well as general costs: *S. Renfrew Case*, *Hodg.* 556. And see *Cornwall Case*, 10 C. L. J. 313; *Kingston Case*, *Hodg.* 625; *Cornwall Case*, *Hodg.* 547.

Where an election was avoided for improper rejection of a nomination paper by the Returning Officer, who acted honestly and fairly on legal advice, each party was left to bear his own costs: *S. Renfrew Case*, *Hodg.* 705.

Trial judges will leave it to the taxing master to decide what witness fees should be taxed: *Niagara Case*, 10 C. L. J. 317.

An agreement by which the political association with which petition is allied, is to pay the costs of the proceedings, is not champertous: *N. Simcoe Case*, *Hodg.* 617.

Costs of attendance of Clerk of Crown in Chancery refused, and only what certified copies of necessary parts of lists would have cost allowed: *Lisgar Case*, 14 *Man.* 268.

As to Sheriff's and Crier's fees, see *Bergeron v. Brunet*, 5 *Que. P. R.* 433.

Section 74 (Counsel fees). As to allowance of counsel fees, see *N. Victoria Case*, 39 *U. C. Q. B.* 147; *Bergeron v. Brunet*, 5 *Que. P. R.* 434.

#### WITHDRAWAL AND ABATEMENT.

Section 78 (Leave). On day fixed for trial, petitioner stated he had no evidence to offer and judges refused to substitute a new petitioner, no collusion being shown for dropping petition: *S. Essex Case*, 2 *Ont. E. C.* 6.

Though withdrawal of petition may be a corrupt bargain in law, the judges must consider the motives of the parties, and if a corrupt bargain was not intended the deposit will not be ordered to remain as security for costs of the new petitioner: *Kingston Case*, 30 *U. C. C. P.* 389.

Application to substitute petitioner should be made at hearing of motion for leave to withdraw: *S. Leeds Case*, 2 *Ont. E. C.* 1.

If order to substitute could be made later, it should be applied for within reasonable time and delay accounted for: *Ib.*

#### RULES OF COURT.

Section 85 (Making rules). Compliance with rules in New Brunswick: *Baird v. King*, 31 *N. B.* 189. In Nova Scotia: *King's (N. S.) Case*, 36 *S. C.* 520; *Ripley v. Logan*, 37 *N. S.* 349.

Section 86 (Rules not made). Where English rules govern, when a petition is presented a copy must be left with the clerk to be sent to the returning officer, and if not the petition may be dismissed on preliminary objection: *Lisgar Case*, 20 *S. C.* 1, followed in *Burrard Case*, 31 *S. C.* 459, affirming 8 *B. C.* 65. *British Columbia. Esquimalt Case*, 7 *B. C.* 471.

# ANNOTATIONS.

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## CHAPTER 10.

### Senate and House of Commons.

#### Section 4. Privileges and Immunities:

Examination—House in Session: *Cox v. Prior*, 18 P. R. 492; *Regan v. McGreevy*, 5 P. R. 94.

#### ARREST AND ATTACHMENT.

*Regina v. Gamble*, 9 U. C. R. 546; *Henderson v. Dickson*, 19 U. C. R. 592; *Wadsworth v. Boulton*, 2 C. L. Ch. 76; *Meyers v. Harrison*, 4 Gr. 148; *Re Essex Election*, 4 L. J. 212; *Cassidy v. Stuart*, 2 Man. & G. 437; *Goudy v. Duncombe*, 1 Ex. 430; *Re Anglo-French Co-operative Society*, 14 Ch. D. 533; *European au Finance Corporation, v. M. P.*, 13 L. T. 447; *Curling v. Innes*, 2 H. Bl. 372; *Doyle v. Falconer*, 4 Moo. P. C. (N.S.), 203.

Colonial legislatures—Powers: *Keiley v. Carson*, 4 Moo. P. C. 63.

#### CONTEMPT OF HOUSE.

*McNab v. Bidwell*, Dra. 144; *Burdett v. Abbott*, 14 East 1, 154; *Burdett v. Colman*, 14 East 163; *Stockdale v. Hansard*, 3 P. & D. 349; *In re Middlesex*, 11 A. & E. 273; *Beaumont v. Barrett*, 1 Moo. P. C. 51.

#### SPEAKER'S WARRANT.

*Brown v. Paxton*, 19 U. C. R. 238.

Witness—Parliamentary duties: *Rees v. Attorney-General*, 2 Ch. Ch. 386.

Section 4. Jurisdiction of Courts over members: *Rex v. Flower*, 8 T. R. 314; *Rex v. Hobhouse*, 3 P. Ald. 420; *Bradlaugh v. Gossett*, 12 Q. B. D. 271; *Bradlaugh v. Erskine*, 47 L. T. 618; *Murray's Case*, 1 Wils. 299; *Burdett v. Abbott*, 14 East 1, 148, 154; *Burdett v. Colman*, 14 East 163; *Stockdale v. Hansard*, 9 Ad. & E. 1; *In re*



Middlesex, 11 A. & E. 273; Brass Crosby Case, 2 W. Bl. 754; Lindsay, Ex parte Armstrong (1892) 1. Q. B. 327; Wellesley v. Beaufort, 2 Russ. & M. 639.

Privileges — Words spoken in debate: Dillon v. Balfour, 20 R. R. Ir. 600.

Evidence given before committee: Goffin v. Donnelly, 6 Q. B. D. 307.

Effect of bankruptcy: Newcastle v. Morris, L. R. 4 H. L. 661; Pooley, Ex parte Russell, L. R. 7 Ch. 519.

Officers of House: Howard v. Gossett, Car. & M. 380.

Sections 10-12. Change of office: McDonald v. Smith, 17 U. C. R. 310; Macdonald v. Macdonald, 8 C. P. 479.

# ANNOTATIONS.

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## CHAPTER 11.

### House of Commons Act.

#### DISQUALIFICATION.

Section 2 (Local members). Member of legislature, who has forfeited seat by contract with the Crown, eligible for election to Commons: Prince Case, 14 S. C. 265.

# ANNOTATIONS.

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## CHAPTER 16.

### Civil Service Act.

#### CONSTITUTION.

Section 6 (Salary vote). Postmaster entitled to salary according to scale, Sched. B., though aggregate of salaries of Department exceeds vote: *Hargrave v. The King*, 8 Ex. C. 62.

#### SALARIES.

Section 90 (Extras). Only applies to additional payment for services pertaining to duties of office: *The Queen v. Bradley*, 27 S. C. 657 affirming 5 Ex. C. 409. And see *Balderson v. The Queen*, 28 S. C. 261.

#### POST OFFICE.

Sch. B. (Salaries). Privy Council or Postmaster-General cannot vary salary payable by scale: *Hargrave v. The King*, 8 Ex. c. 62.

Postmaster entitled to salary according to scale, though aggregate of salaries of department exceeds vote: *Ib.*

# ANNOTATIONS.

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## CHAPTER 17.

### Civil Service Superannuation Act.

#### ALLOWANCES AND GRATUITIES.

Section 20 (Compulsory retirement). No absolute right to retiring allowance which is in discretion of executive: *Balderson v. The Queen*, 28 S. C. 261.

# ANNOTATIONS.

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## CHAPTER 19.

### Public Officers Act.

#### SECURITY.

Section 5 (Officers). Obligation of principal: *Black v. The Queen*,  
6 Ex. C. 236; affirmed by 29 S. C. 693.

Laches of Crown Officers: *Ib.*

Evidence of execution by surety: *The Queen v. Chesley*, 16 S. C. 306.

Section 6 (Form of bond): *Black v. The Queen*.

# ANNOTATIONS.

## CHAPTER 24.

### Consolidated Revenue and Audit Act.

#### COLLECTION OF THE REVENUE.

Section 19 (Officers—Duties—Liabilities). See the notes to ss. 139, 146 and 160 of the Customs Act (R. S. C., 1906, c. 48, *infra*; also the notes to ss. 94 and 97 of the Inland Revenue Act (R. S. C., 1906), c. 51, *infra*.

#### EXPENDITURE OF MONEY GRANTED BY PARLIAMENT.

Section 41 (Public moneys). See per Burbidge, J., in *Quebec Skating Club v. The Queen* (1893), 3 Ex. C. R. at p. 397. See also per Richards, C.J., in *Wood v. The Queen* (1877), 7 S. C. B. at p. 647, *et seq.* And see note to s. 45, *infra*.

Section 42 (Repairs). See per Burbidge, J., in *McHugh v. The Queen* (1900), 6 Ex. C. R. at p. 381. See also *Hamburg American Packet Company v. The King* (1901), 7 Ex. C. R. 150; 33 S. C. R. 252. See also *Hargrave v. The King*, 8 Ex. C. R. 62, as to necessity for Parliamentary authority for payments.

Section 45. See *Murray v. The Queen* (1895), 5 Ex. C. R. 19, 26 S. C. R. 203; *Goodwin v. The Queen* (1897), 5 Ex. C. R. 293; *Hall v. The Queen* (1893), 3 Ex. C. R. 373; *Henderson v. The Queen* (1897), 6 Ex. C. R. 39; 28 S. C. R. 425; *The Queen v. St. John Water Commissioners*, 19 S. C. R. 125; *Humphrey v. The Queen*, 20 S. C. R. 591. See also cases cited under s. 41, *supra*.

#### REMISSION OF DUTIES AND FORFEITURES.

Section 92. While the Court has no discretion under the Customs Act to remit a penalty, the Governor in council has under the Audit Act: *The Queen v. Fitzgibbon & Co.* (1900), 6 Ex. C. R. at p. 385.

# ANNOTATIONS.

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## CHAPTER 27.

### Dominion Notes.

#### INTERPRETATION.

Section 2 ("Dominion Notes"). See ss. 60, 65, 75, 127 and 128 of the Bank Act (R. S. C., 1906, c. 29).

(Provincial right to tax). A local legislature has authority to impose a tax on the Dominion notes held by a bank as portion of its cash reserve under the provisions of s. 60 of the Bank Act. See *Windsor v. Commercial Bank* (1882), 15 N. S. R. 420.

As to criminal offences respecting Dominion notes: see the Criminal Code (R. S. C. 1906, c. 146).

# ANNOTATIONS.

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## CHAPTER 29.

### Banks and Banking.

#### INTERPRETATION.

Section 2 (f).—Debts are not included in expression “goods, wares, and merchandise”: Per *Armour, C.J.*, in *Rennie v. Quebec Bank* (1902) 3 Ont. L. R. 541.

Section 2 (g).—The goods should be described with reasonable certainty in warehouse receipt: *Llado v. Morgan* (1874), 23 U. C. C. P. 517; *Bank of Hamilton v. Noye Manufacturing Co.* (1885) 9 Ont. R. 638.

#### APPLICATION OF ACT.

Section 3.—As to constitutionality of this legislation, see *Tennant v. Union Bank of Canada* (1894), A. C. at p. 46. Act does not apply to foreign banking corporations: Per *Rose, J.*, in *Commercial National Bank of Chicago v. Corcoran* (1884) 6 Ont. R. at p. 531.

#### INCORPORATION AND ORGANIZATION.

Section 12.—Provisional directors should allot stock to subscribers, and give them notice thereof: *Nasmith v. Manning* (1881) 5 S. C. R. 417.

#### INTERNAL REGULATIONS.

Section 18.—By-laws and deeds should have corporate seal affixed: *Bank of Upper Canada v. Widmer* (1832) 2 U. C. O. S. 222B; *Bank of Commerce v. Jenkins* (1888) 16 Ont. R. 215.

Section 18 (c).—Quorum validating resolution: *Bank of Liverpool v. Bigelow* (1878) 12 N. S. R. 236.

Section 19.—Directors can do whatever the whole of the stockholders can do: Per *Robinson, C.J.*, in *Bank of Upper Canada v. Widmer* (1832) 2 U. C. O. S. at p. 241B.



But their acts must be regular, and done on behalf of the corporation: *O'Dell v. Boston and Nova Scotia Coal Co. Ltd.* (1897) 29 N. S. R. 385.

Directors and managers are quasi-trustees for general body of shareholders: *Drake v. Bank of Toronto* (1862) 9 Gr. 116.

As to personal interests of director conflicting with company's interests, see per Baggallay, L.J., in *North-West Transportation Company v. Beatty* (1887) L. R. 12 A. C. at p. 593.

Section 22.—As to setting aside director's election, see *Toronto Brewing and Malting Co. v. Blake* (1882) 2 Ont. R. 175; *Gilmour v. Hall* (1886) M. L. R. 2 Q. B. 374; *Henry v. Simard* (1866) 16 L. C. R. 273.

Section 23.—Majority of legal votes must be polled against director to avoid election: *Gibb v. Poston* (1866) 16 L. C. R. 257.

Section 29 (a).—Quære: If verbal authority from directors to manager sufficient for sale of land? *Dominion Bank v. Knowlton* (1877) 25 Grant 125.

Section 30.—Authority of officers: *Merchants Bank of Halifax v. Whidden* (1891) 19 S. C. R. 53; *Grieve v. Molsons Bank* (1885) 8 Ont. R. 162.

Section 30, s.-s. 4.—Employees' Bonds: *Bank of Upper Canada v. Covert* (1836) 5 U. C. O. S. 541; *Bank of Toronto v. Wilmot* (1859) 19 U. C. Q. B. 73; *Royal Canadian Bank v. Yates* (1869) 19 U. C. C. P. 439; *Springer v. Exchange Bank* (1887) 14 S. C. R. 716; *City Bank v. Brown* (1852) 2 L. C. R. 246; *Bank of Toronto v. European Assurance Society* (1870) 14 L. C. J. 186; s. c. in P. C. (1875) 7 R. L. 57; *Citizens Ins. Co. v. Grand Trunk Ry. Co.* (1880) 3 L. N. 312; *Banque Nationale v. Lesperance* (1881) 4 L. N. 147.

Section 32.—Shareholder not disqualified by pecuniary interest in question: Per Baggallay, L.J., in *North-Western Transportation Co. v. Beatty* (1887) L. R. 12 A. C. at p. 593.

Section 32, s.-s. 7.—"Manager" probably does not mean managing director: See *Reg. v. Bank of Upper Canada* (1848) 5 U. C. Q. B. 338.

Section 32, s.-s. 9.—Partly paid up shares have equal voting status with those fully paid up, provided there has been no default after call: *Purdom v. Ontario Loan and Debenture Co.* (1892) 22 Ont. R. 597.

## CAPITAL STOCK.

Section 34.—Directors may fix rate of stock to public, but cannot offer it below par: See per Ritchie and Strong, J.J., in *McCracken v. McIntyre* (1877) 1 S. C. R. at pp. 509, 527.

## SHARES AND CALLS.

## SHARES.

Section 36.—Shares are (choses in action) personal property in the county in which the head office may be: *In re Bank of Ontario* (1879) 44 U. C. Q. B. at p. 251.

Section 36, s.-s. 3.—See above case.

Section 37.—As to effect of acceptance of shares: see *Central Bank of Canada, Baines' Case* (1889) 16 Ont. A. R. 237; *Central Bank of Canada, Nasmith's Case* (1891) 18 Ont. A. R. 209.

Note: There is no provision for interest on overdue share calls. Cf. the following cases upon cognate statutes: *St. John Bridge Co. v. Woodward* (1840) 3 N. B. R. 29; *Hughes v. La Compagnie des Villas du Cap Gibraltar* (1889) M. L. R. 5 S. C. 129.

## CALLS.

Section 38.—Quorum of directors necessary to make valid calls: *Ontario Insurance Co. v. Ireland* (1855) 5 U. C. C. P. 139; *Bank of Liverpool v. Bigelow* (1878) 12 N. S. R. 236.

Except in case of insolvency (see s. 128, s.-s. 4), a by-law or resolution is required for each call. Thirty clear days must elapse between actual dates of making: *Robertson v. Banque d'Hochelaga* (1881) 4 L. N. 314; *Exchange Bank v. Darling* (1884) 16 R. L. 649; *Exchange Bank v. Chaplin* (1885) 17 R. L. 246; *Bank of Nova Scotia v. Forbes* (1883) 16 N. S. R. 295; *Saint John Bridge Co. v. Woodward* (1840) 3 N. B. R. 29.

Section 40.—Forfeiture cannot be made without notice, putting the owner in default: *Robertson v. Banque d'Hochelaga* (1881) 4 L. N. 314.

Act must be strictly complied with. Courts will not favour forfeiture: *Ibid.*

## TRANSFER AND TRANSMISSION OF SHARES.

Section 43 (a).—Transfer. As to valid acceptance, see *Walsh v. Union Bank* (1879) 5 Q. L. R. 289; *Re Central Bank and Hogg* (1890) 19 Ont. R. 7.

Defective Registration: see *Smith v. Walkerville Iron Co.* (1896), 23 Ont. A. R. 95; *Re Central Bank, Home Savings and Loan Co.'s Case* (1891) 18 Ont. A. R. 489.

Section 43 (b).—Lien on stock for partnership debt: *In re Chinic* (1888) 14 Q. L. R. 289.

Section 45.—One who subscribes in his own name for shares for another person is jointly and severally liable with that other therefor: *Molsons Bank v. Stoddart* (1890) M. L. R. 6 S. C. 18.

Duty of the transferee to enquire if transfer is authorized: *Bank of Montreal v. Sweeny* (1887) 12 A. C. 617. Improper refusal by bank to transfer: *Smith v. Bank of Nova Scotia* (1882) 8 S. C. R. 558.

Effect of winding-up order on irregular transfer: *In re Central Bank of Canada; Home Savings and Loan Co.'s Case* (1891) 18 Ont. A. R. 489.

Purchase of share to qualify to sue bank: *Jones v. Imperial Bank* (1876) 23 Gr. 262.

Irregular transfer—transferee estopped from raising irregularity: *Bank of Liverpool v. Bigelow* (1878) 12 N. S. R. 236.

Section 46.—Head office of Bank in Toronto. Sale of share under execution in Montreal: *In re Bank of Ontario* (1879) 44 U. C. Q. B. 247.

Shares cannot be seized by means of *saisie arrêt* in Quebec, but must be seized conformably to Art. 566 (now Art. 642) C. C. P. by writ of execution: *Hudon v. Banque du Peuple* (1875) 7 R. L. 229.

Section 47 (a).—Transmission. Bank may refuse to register transfer to executors, in case of transmission by death, until proof is given that duty is paid: *Heneker v. Bank of Montreal* (1895) Q. R. 7 S. C. 257.

Section 50.—See *Ibid.*

Section 52.—The holder of shares "in trust" is not a *mandataire prête-nom*. A transferee from such holder is bound to know whether transfer is authorized by the trust: *Bank of Montreal v. Sweeney* (1887) A. C. 617.

Bank's knowledge of trusts being defeated by transfer: *Simpson v. Molson's Bank* (1895) A. C. 270.

Loan company as trustee: *In re Central Bank of Canada, Home Savings and Loan Company's Case* (1891), 18 Ont. A. R. 489.

Section 53.—Purchase of shares by curator to substitution. Proceedings to invalidate: *Petry v. Caisse d'Economie de Notre Dame de Quebec* (1891) 19 S. C. R. 713.

#### ANNUAL STATEMENT AND INSPECTION.

Sections 54 and 55.—See cases cited under s. 153, *infra*.

Section 56.—The fact that directors fail to inspect books, when by so doing they would have discovered embezzlement by an officer of bank is no defence in an action by bank against his sureties: *Springer v. Exchange Bank* (1886) 13 Ont. A. R. 390; (1887) 14 S. C. R. 716.

A stockholder, merely as such, has no right to inspect the stock or other books of the bank. The Court will require some special ground to be disclosed before granting him a mandamus therefor: *In re Bank of Upper Canada v. Baldwin* (1829) Dra. 55.

A local manager is bound to produce under a subpoena d.t., the books of his office, even when bank is not a party to the suit: *Hannum v. McRae* (1898) 18 Ont. P. R. 185.

A bank cannot refuse to disclose its transactions with one of its customers, when the propriety of those transactions is in question in a court of law between the bank and another customer who attacks them, and shews good cause for requiring the information he seeks: *Re Chatham Banner Co., Bank of Montreal's Claim* (1901) 2 Ont. L. R. 672.

#### CASH RESERVES.

Section 60.—Provincial legislature may enact a law imposing a tax on Dominion notes held by a bank as portion of its cash reserve: *Windsor v. Commercial Bank* (1882) 15 N. S. R. 420.

#### BUSINESS AND POWERS OF A BANK.

Section 76 (a).—For payment of cheques, a branch bank is distinct from head office or other branches; the customer can only present cheques at the branch where account is kept. . . . Again, as to notice of dishonour or protest each branch indorsing has a day to send notice to next preceding indorser: *Irwin v. Bank of Montreal* (1876) 38 U. C. Q. B. 375; *Steinhoff v. Merchants Bank*

(1881) 46 U. C. Q. B. 25; *The Queen v. Bank of Montreal* (1886) 1 Ex. C. R. 154. But where a bank has its head office in another province, but a branch in Ontario, the bank was deemed to be resident in Ontario: *Wentworth v. Smith* (1893) 15 Ont. P. R. 372. Bank is bound to know correct amounts of drafts by branches: *Union Bank v. Ontario Bank* (1879) 9 R. L. 631.

Section 76 (c) and (d).—"Dealing" in negotiable securities includes purchasing as well as lending money upon them: per Proudfoot, V.C., in *Jones v. Imperial Bank* (1876) 23 Gr. at p. 273.

A letter from a member of a provincial government promising to pay a sum when voted by the legislature is not a "negotiable security" within the meaning of this section: *Jacques Cartier Bank v. The Queen* (1895) 25 S. C. R. 84.

A bank may take a bill of sale of horses as collateral security for an existing debt: *Bank of Hamilton v. Donaldson* (1901) 13 Man. R. 378.

As to distinction between "negotiable instrument" and a "chase in action" as applied to "deposit receipts": see *In re Commercial Bank of Manitoba, Barkwell's Claim* (1897) 11 Man. R. 494.

Discounting notes is not business exclusively appertaining to banking: *La Société Permanent district d'Iberville v. Rossiter* (1881) 4 L. N. 269.

Payments by bank. When property in money paid over by teller passes to payee: see *Hall v. Hatch* (1902) 3 Ont. L. R. 147.

A banker does not owe to the holder of a cheque the duty of knowing his customers' signature: *Rex v. Bank of Montreal* (1905) 10 Ont. L. R. 117.

A credit entry may be cancelled in books of bank where a cheque was merely handed in for collection, and the bank had no intention of discounting it: *The Queen v. Bank of Montreal* (1886) 1 Ex. C. R. 154.

Sale of railway bonds held as collateral—Trust: *Nova Scotia Central Ry. Co. v. Halifax Banking Co.* (1892) 21 S. C. R. 536.

Return of collateral securities after payment of debt: *Union Bank v. Elliott* (1902) 14 Man. R. 187.

Pledge of railway bonds—Obligation to sell by auction: *Toronto General Trusts Co. v. Central Ontario Ry. Co.* (1905) 10 Ont. L. R. 347.

Lien of bank on customer's money: *In re Williams* (1903) 7 Ont. L. R. 156.

**Section 76, s.-s. 2.**—The assignment to a bank of a mortgage upon land to secure indorsement is not a violation of this section: *Re Essex Land and Timber Company, Trout's Case* (1891) 21 Ont. R. 367.

The prohibition against advances upon security of shares of another bank applies to the bank, and not to the borrower: *Exchange Bank v. Fletcher* (1891) 19 S. C. R. 278.

As to negotiable nature of "municipal debentures": see *Crawford v. Cobourg* (1861) 21 U. C. Q. B. 113; *Sceally v. McCallum* (1862) 9 Gr. 434; *Parish of St. Césaire v. McFarlane* (1887) 14 S. C. R. 738.

Bonds and debentures of other corporations: *Bank of Toronto v. Cobourg P. & M. Ry. Co.* (1884) 7 Ont. R. 1; *Desrosiers v. Montreal P. & B. Ry. Co.* (1883) 6 L. N. 388.

It is not a violation of this section for a bank to guarantee payment to vendors in England of price of merchandise sold to customer in Montreal: *Molsons Bank v. Kennedy* (1879) 10 R. L. 110. But see *Johansen v. Chaplin* (1889) M. L. R. 6 Q. B. 111; *Watts v. Wells* (1890) M. L. R. 7 Q. B. 387.

Assignment of claim for price of goods at time of discount of unaccepted draft therefor: *Merchants Bank v. Darveau* (1898) Q. R. 15 S. C. 325. And see *Molsons Bank v. Carscaden* (1892) 8 Man. R. 451.

Goods acquired by means not recognized by Act: *Radford v. Merchants Bank* (1883) 3 Ont. R. 529.

Capital stock bought by directors with bank's money for unfair purpose—Personal liability: *McDonald v. Rankin* (1890) M. L. R. 7 S. C. 44.

What the legislature prohibits in this section is a loan distinctly made upon the security of the mortgage. Where a hypothec on certain real estate in Montreal was transferred by notarial deed to a bank to secure a contemporaneous loan, it was held to be void as infringing the Act: *Bank of Toronto v. Perkins* (1882) 8 S. C. R. 603. *Commercial Bank v. Bank of Upper Canada* (1859) 7 Gr. at p. 430, is in apparent conflict with foregoing case. But see *Rolland v. La Caisse d'Economie* (1895) 24 S. C. R. 405; *Sarrazin v. Bank of St. Hyacinthe* (1881) 28 L. C. J. 270. See also notes to s. 80, post.

**Section 77.**—Persons against whom lien sought to be enforced must be a customer of the bank: *Allen v. Bank of New Brunswick* (1877) 17 N. B. R. 446.

The shares must really belong to the debtor before lien attaches: *Bank of Montreal v. Sweeney* (1887) 12 A. C. 617.

The lien attaches to shares held by a member of a firm for a debt due the bank by such firm: *In re Chinic and Union Bank* (1888) 14 Q. L. R. 289.

Section 78.—Securities pledged for a special debt cannot be held for an anterior debt: *Exchange Bank v. City and District Savings Bank* (1885) 14 R. L. 8. And see *Thompson v. Molsons Bank* (1889) 16 S. C. R. 664; *Insky v. Hochelaga Bank* (1896) Q. R. 10 S. C. 510.

Section 80.—The interest of a railway company in a contract for construction of cars may be assigned as security for previous advances: *Bank of Upper Canada v. Killaly* (1861) 21 U. C. Q. B. 9. As to mortgages to secure notes under discount and renewals, see *Cameron v. Kerr* (1878) 3 Ont. A. R. 30; *Dominion Bank v. Oliver* (1889) 17 Ont. R. 402; *Merchants Bank of Halifax v. Houston*, 31 S. C. R. 361.

A mortgage of timber limits in Quebec “for advances made and to be made,” held valid as to former, aliter as to latter: *Grant v. Banque Nationale* (1885) 9 Ont. R. 411.

A bank may sell goods under a chattel mortgage taken as additional security, without infringing this section: *Stewart v. Union Bank* (1888) 15 Ont. A. R. 749.

As to assignment of mortgages to bank by indorsers, see *Essex Land Company, Trout's Case* (1891) 21 Ont. R. 367.

A chattel mortgage taken simultaneously with the discount of a note by a bank is void: *Bathgate v. Merchants Bank* (1888) 5 Man. R. 210. And see *Gillies v. Commercial Bank* (1885) 10 Man. R. 460.

Section 81 (b).—Holder of second mortgage has same right to purchase as a stranger, even if he is in actual possession: *Harron v. Yemen* (1883) 3 Ont. R. 126.

Section 86.—As to constitutionality of these provisions, see *Tenant v. Union Bank* (1894) A. C. 31.

The provisions of this section do not apply to a foreign corporation: *Commercial National Bank of Chicago v. Corcoran* (1884) 6 Ont. R. 527.

The following cases illustrate the principles upon which the courts proceed in determining the rights of banks holding warehouse receipts and bills of lading as collateral security:—

*Bank of B. N. A. v. Clarkson* (1869) 19 U. C. C. P. 182.  
*Royal Canadian Bank v. Miller* (1870) 29 U. C. Q. B. 266.

- Royal Canadian Bank v. Carruthers (1870) 29 U. C. Q. B. 283.
- Coffee v. Quebec Bank (1870) 20 U. C. C. P. 555.
- Todd v. Liverpool Ins. Co. (1870) 20 U. C. C. P. 523.
- McBride v. Gore Insurance Co. (1870) 30 U. C. Q. B. 451.
- Wilson v. Citizens Ins. Co. (1875) 19 L. C. J. 175.
- Cockburn v. Sylvester (1877) 1 Ont. A. R. 471.
- Royal Canadian Bank v. Ross (1877) 40 U. C. Q. B. 466.
- Milloy v. Kerr (1878) 3 Ont. A. R. 350; 8 S. C. R. 474.
- Gibbs v. Dominion Bank (1879) 30 U. C. C. P. 36.
- Molsons Bank v. Girdlestone (1879) 44 U. C. Q. B. 54.
- Merchants Bank of Canada v. Smith (1883) 8 S.C.R. 512.
- Merchants Bank of Canada v. Hancock (1884) 6 Ont. R. 285.
- Dominion Bank v. Davidson (1885) 12 Ont. A. R. 90.
- Bank of Hamilton v. Noye Mfg. Co. (1885) 9 Ont. R. 631.
- Re Monteith, Merchants Bank v. Monteith (1886) 10 Ont. R. 529.
- Thompson v. Molsons Bank (1889) 16 S. C. R. 664.
- Peuchen v. Imperial Bank (1890) 20 Ont. R. 325.
- Re Goodfallow, Traders Bank v. Goodfallow (1890) 19 Ont. R. 299.
- Re Central Bank, Canada Shipping Co.'s Case (1891) 21 Ont. R. 515.
- Tennant v. Union Bank (1892) 19 Ont. A. R. 1; (1894) A. C. 31.
- La Banque d'Hochelaga v. Merchants Bank (1894) 10 Man. R. 361.
- Imperial Bank v. Hull (1901) 4 Terr. L. R. 498.
- Armstrong v. Buchanan (1903) 35 N. S. R. 559.

Section 88.—Wood that has been manufactured (i.e., formed into planks, boards, skirting-boards and mouldings) does not constitute a "product of the forest" as here used: *Molsons Bank v. Beaudry* (1901) Q. R. 11 K. B. 212.

Notwithstanding the language of s. 90, bank may take securities under s. 88 for pre-existing debts, as the general provisions of s. 80 ought not to be restricted by s. 90: *Banque d'Hochelaga v. Merchants Bank* (1895) 10 Man. R. 361.

See also *Houston v. Merchants Bank of Halifax* (1899) 7 B. C. R. 465; (1901) 31 S. C. R. 361. An assignment (made under Sched. C.) as security for a bill or note given in renewal of a past due bill or note is not valid as a security hereunder: *Bank of Hamilton v. Halsted* (1897) 28 S. C. 235. See also *Ross v. Molsons*



Bank (1881) 2 Dor. 82; Perkins v. Ross (1880) 6 Q. L. R. 65; Robertson v. Lajoie (1878) 22 L. C. J. 169.

Right to proceeds of sale in hands of person with knowledge of bank's claim: Union Bank of Halifax v. Spinney (1907) 38 S. C. R.

Section 89.—A bank took from a miller a warehouse receipt for certain "wheat and its products." It was held that when the wheat in the mill was reduced to the quantity, or less, named in the receipt, the whole belonged to the bank. Furthermore, so long as "the product" could be traced in flour or money it could be recovered by the bank: *Re Goodfallow* (1890) 19 Ont. R. 299.

Section 89, s.-s. 2—"Preference over unpaid vendor." This section, although over-riding the provisions of the Quebec Civil Code respecting the paramount right of an unpaid vendor (C. C. L. C. Art. 1994), has been declared to be constitutional: *Tennant v. Union Bank* (1894) A. C. 31.

Section 89, s.-s. 3.—Bill of lading—Sale of goods by pledgee—Absolute sale and not mere transfer of interest of bank under bill of lading: *Peuchen v. Imperial Bank* (1890) 20 Ont. R. 325.

Section 90.—"Negotiated or contracted": *Halsted v. Bank of Hamilton* (1896) 27 Ont. R. 435; (1897) 28 S. C. R. 235.

"Acquire or hold": *Re Central Bank* (1891) 21 Ont. R. 515. See also *Suter v. Merchants Bank* (1877) 24 Gr. 365.

Preference sustained on ground of previous promise or agreement: *Allan v. Clarkson* (1870) 17 Gr. 570; *McRoberts v. Steinhoff* (1886) 11 Ont. R. 369; *Clarkson v. Sterling* (1888) 15 Ont. A. R. 234; *Embury v. West* (1888) 15 Ont. A. R. 357; *Lawson v. McGeoch* (1893) 20 Ont. A. R. 464.

Substitution of warehouse receipts for securities given under s. 88: *Conn v. Smith* (1897) 28 Ont. R. 629.

Section 91.—"Interest or discount." Comparison with s. 80 of the Bank Act, 1890, will show that a bank no longer enjoys an express exemption from penalty or forfeiture for usury. And see s. 5 of R. S. C. 1906 c. 122. While a demand for a higher rate of interest than 7 per cent. may be successfully resisted, the excess of interest taken does not render the transaction void: per *Martin, J.*, in *Adams v. Bank of Montreal* (1899) 8 B. C. R. at p. 316. See also *La Banque de St. Hyacinthe v. Sarrazin* (1892) Q. R. 2 S. C. 96; *Bank of B. N. America v. Bossuyt*, 15 Man. R. 266.

Section 95.—The cases are conflicting upon the question as to whether deposit receipts are negotiable instruments (see *Mander v. Royal Canadian Bank* (1869) 20 U. C. C. P. 125; *Bank of Montreal v. Little* (1870) 17 Gr. 313; *Voyer v. Richer* (1869) 13 L. C. J. 213, (1874) L. R. 5 P. C. 461; *Lee v. Bank B. N. A.* (1879) 30 U. C. C. P. 255; *Re Central Bank* (1889) 17 Ont. R. 574.

But under sec. 22 of the Bills of Exchange Act, R. S. C. (1906) c. 119, an instrument may be negotiable without express words making it so.

A deposit receipt may be the subject of a *donatio mortis causa*: *Brown v. General Trusts Corporation* (1900) 32 Ont. R. 319.

Donation of "all movables"—Exclusion of deposit receipt: *Sabourin v. City and District Bank* (1903) 12 Q. R. K. B. 380.

Deposit after suspension of bank: *Ontario Bank v. Chaplin* (1891) 20 S. C. R. 152. See also *Exchange Bank v. Montreal Coffee House* (1886) M. L. R. 2 S. C. 141; *Re Central Bank of Canada, Wells and MacMurphy's Case* (1888) 15 Ont. R. 611; *Tempest v. Bertrand*, Q. R. 19 S. C. 365.

A condition in a bank deposit receipt that the receipt should on payment be given up, does not entitle the bank to retain the money in case the receipt is not forthcoming: *Bank of Montreal v. Little* (1870) 17 Gr. 685.

Payment after depositor's death: *Lee v. Bank of British North America* (1879) 30 U. C. C. P. 255.

Setting off debt due bank against deposit: *Ontario Bank v. Routhier* (1900) 32 Ont. R. 67.

A bank having received a deposit subject to certain notice of withdrawal, if required, cannot set up as a defence to an action for the deposit the absence of such notice, unless the refusal to pay was based on that ground: *Henderson v. Bank of Hamilton* (1894) 25 Ont. R. 641.

Bank as stakeholder of moneys deposited—Interest thereon: *Hutton v. Federal Bank* (1883) 9 Ont. P. R. 568.

Foreign domicile of depositor at time of death—Succession duty: *Attorney-General of Ontario v. Newman* (1899) 31 Ont. R. 340.

Transfer of deposit by husband to wife: *Sheratt v. Merchants Bank of Canada* (1894) 21 Ont. A. R. 473.

Section 96.—Liability of bank in respect of clients' funds deposited by solicitor: *Bailey v. Jellett* (1884) 9 Ont. A. R. 187.

Assignee of insolvent estate withdrawing estate funds and depositing to his own credit in same bank—Bank not liable to repay estate: *Clench v. Consolidated Bank of Canada* (1880) 31 U. C. C. P. 169.

#### INSOLVENCY.

**Section 125.**—A director who has drawn dividends on stock standing in his name cannot set up irregularities in the issue of this stock to escape double liability: *Court v. Waddell* (1881) 4 L. N. 78.

A loan company authorized to lend money on bank shares, and which has accepted a transfer of shares in the ordinary absolute form, cannot escape double liability on the ground that it is merely a trustee for the borrower: *Re Central Bank, Home Savings and Loan Co.'s Case* (1891) 18 Ont. A. R. 489.

**Section 126.**—A deposit made with a bank on the day and hour it suspends may lawfully be returned to the depositor: *Exchange Bank v. Montreal Coffee House Association* (1886) M. L. R. 2 S. C. 141.

A deposit made immediately after suspension, that fact being unknown to the depositor, may be recovered at law: *Re Central Bank, Wells and McMurchy's Case* (1888) 15 Ont. R. 611.

After a bank has suspended payment, and its insolvency is notorious, compensation of a debt due to the bank cannot be effected by a transfer to the debtor of debts due by the bank to third parties: *Sisters of Charity v. Kent* (1904) 13 Q. R. K. B. 483.

A person who deposits in a bank, after its suspension, cheques of third parties accepted by such bank, is not entitled to be paid by privilege the amount of such deposit: *Ontario Bank v. Chaplin* (1889) M. L. R. 5 Q. B. 407.

Recovery by bank of moneys paid out on depositors' cheques after suspension: see *Exchange Bank v. Hall* (1886) M. L. R. 2 Q. B. 409.

Deposit in another bank of bills of suspended bank—Right of former bank to return bills to depositor: *Conn v. Merchants Bank* (1879) 30 U. C. C. P. 380.

**Section 127.**—The day on which bank suspends is reckoned as the first day of the ninety days: *Mechanics Bank v. St. Jean* (1879) 9 R. L. 555.

Before the expiration of the ninety days a creditor may sue and get judgment: *Senecal v. Exchange Bank* (1884) M. L. R. 2 S. C. 107.

Section 128.—As to placing bank shareholders on the list of contributories in proceedings under the Winding-up Act (R. S. C. 1906, c. 144): see *Cloyes v. Darling* (1884) 16 R. L. 649.

A banker is a trader within the Insolvent Acts: *Bagwell v. Hamilton* (1864) 10 U. C. L. J. 305; *Duncan v. Smart* (1874) 35 U. C. Q. B. 532.

Reference at large is directed to the special provisions of the Winding-up Act respecting banks, and the cases there noted.

Section 130.—As to liability of prior and subsequent holders of stock within the 60 days mentioned: see *Re Central Bank, Baine's Case* (1889) 16 Ont. A. R. 237; *Re Central Bank, Henderson's Case* (1889) 17 Ont. R. 110; *Boulbee v. Gzowski* (1898) 29 S. C. R. 54.

Section 131 (b). Crown's priority. See *Maritime Bank v. The Queen* (1888) 17 S. C. R. 657; *Exchange Bank v. The Queen* (1885), 11 A. C. 157.

#### OFFENCES AND PENALTIES.

Section 153.—As to procedure on indictments hereunder: see *Reg. v. Cotté* (1877), 22 L. C. J. 141; *Reg. v. Hincks* (1879), 24 L. C. J. 116; *Molleur v. Loupret* (1885) 8 L. N. 305.

Section 153 (2).—Directors may be held personally responsible for losses incurred through a statement which they know to be untrue, or where they are guilty of such gross negligence as to amount to fraud: *Parker v. McQuesten* (1872) 32 U. C. Q. B. 273; *McDonald v. Rankin* (1890) M. L. R. 7 S. C. 44; *Préfontaine v. Grenier*, 4 Que. P. R. 21. See also s. 413 of the Criminal Code, and the case of *The Queen v. Gillespie* (1898) 1 Can. Cr. C. 551.

#### UNDUE PREFERENCE TO CREDITORS.

Section 155.—See *Reg. v. Buntin* (1884), 7 L. N. 228 and 395.

And see generally the Bills of Exchange Act (R. S. C. 1906, c. 119.)

# ANNOTATIONS.

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## CHAPTER 30.

### Savings Banks.

#### PART I.

##### POST OFFICE SAVINGS BANKS.

Section 9 (Deposits exempt from attachment). Apart from this express provision for exemption from attachment, it is probable that a deposit of moneys in the hands of the Postmaster-General would be held to be exempt. See Chitty's Prerogatives of the Crown, p. 339.

Section 11 (Repayment of deposit). Defendants associated themselves together to conduct a savings bank, but before they were organized under 4 & 5 Vict. c. 33, their treasurer received a deposit from B. of £75, which he swore was made by B. with the express understanding that any person producing his pass-book should receive it. B. died, and this sum was afterwards paid to a connection of his, who presented the pass-book. The payment it appeared was made in pursuance of certain rules adopted by defendants, but which were not filed according to the statute for some months after. Held, that defendants were liable to B.'s administrator for the money: *Hunter v. Wallace* (1846), 14 U. C. Q. B. 205; *Lee v. Bank B. N. A.* (1879), 30 U. C. C. P. 255.

Savings bank pass-book—*Donatio mortis causa*. See *Perry v. Thorne*, 35 N. B. R. 398; *In re Reid*, 6 Ont. L. R. 421; *Spruce v. Edwards*, 25 C. L. T. (Occ. N.) 118; *Brown v. General Trusts Corporation* (1900), 32 Ont. R. 319.

#### PART III.

Section 45 (Execution of trusts). See *Thorne v. Perry*, 35 N. B. R. 398; *In re Reid*, 6 Ont. L. R. 421; *Spruce v. Edwards*, 25 C. L. T. (Occ. N.) 118; and see notes to s. 52 of the Bank Act (R. S. C., 1906. c. 29), ante.

Section 46 (Repayment of deposit). See note to s. 11, supra.

# ANNOTATIONS.

## CHAPTER 32.

### Savings Banks in the Province of Quebec.

#### CALLS.

**Section 12.**—See s. 38 of the Bank Act (R. S. C. (1906) c. 29.) and notes.

**Sections 14 to 17.**—See ss. 36, 38, and 40 of the Bank Act and notes.

#### TRANSFER OF SHARES AND DEPOSITS.

**Section 22.**—See notes to ss. 47 and 53 of the Bank Act.

#### DEPOSITS AND LOANS.

**Section 29.**—See notes to s. 95 of the Bank Act.

**Section 34.**—Where there is no prohibition in the Act, a savings bank may, in virtue of its ordinary corporate powers, make loans of its own moneys. . . . Any one receiving money from a savings bank on a contract that is ultra vires, is bound to return it under Art. 1047 C. C. L. C.: In re Langlais and La Caisse d'Economie (1893) Q. R. 4 S. C. 65.

A savings bank loaned money upon the collateral security of letters of credit of the Quebec Government. The borrower having failed, the bank filed a claim on his estate, which was contested by other creditors on the ground that the bank was not authorized to lend on such security. Held, assuming that the loan was ultra vires, although this might affect the pledge as regards third parties interested in the securities, it was not, of itself and ipso facto, a radical nullity, of public order of such a character as to disentitle the bank, under Arts. 989 and 990, C. C. L. C., from claiming the money with interest: Bank of Toronto v. Perkins (8 S. C. R. 903) distinguished: Rolland v. La Caisse d'Economie (1895) 24 S. C. R. 405.

Section 36.—Cf. section 80 of the Bank Act. A savings bank can only take security on real property subsequent to the date of a loan. A chattel mortgage cannot be taken as security at all: see *supra* s. 34.

Sections 37, 38, 39, and 40.—In the *Exchange Bank v. C. & D. Savings Bank* (1887) M. L. R. 6 Q. B. 196, it was held that a savings bank could not become a shareholder in a chartered bank, and so subject to double liability. But by s. 40, a savings bank now has power to purchase bank shares.

Section 41.—See s. 81 of the Bank Act, and note.

#### GENERAL PROVISIONS.

Section 50.—See ss. 52 and 96 of the Bank Act and notes.

#### OFFENCES AND PENALTIES.

Sections 59 and 61.—See s. 153 of the Bank Act and notes.

# ANNOTATIONS.

## CHAPTER 34.

### Insurance.

#### APPLICATION OF ACT.

Section 4.—As to doubtful constitutionality of Dominion legislation touching subject-matter of insurance contracts, see *Citizens Ins. Co. v. Parsons* (1881) L. R. 7 A. C. 96; *Goring v. London Mutual Fire Ins. Co.* (1886) 11 Ont. R. 82; *Dear v. Western Assurance Co.* (1877) 41 U. C. Q. B. 553; *Johnston v. Western Assurance Co.* (1879) 4 Ont. A. R. 281. See also note to secs. 71, 72, 73, *infra*.

Section 4, s.-s. 3.—A company incorporated under provincial charter may do business outside province wherever its contracts are recognized by comity or otherwise: *Clarke v. Union Fire Ins. Co.* (1883) 10 Ont. P. R. 313. But the federal legislature can alone confer the right to do business outside the province: see *Citizens Ins. Co. v. Parsons* (*supra*), and *Tennant v. Union Bank* (1894) A. C. 31.

Section 4, s.-s. 4.—See *Reg. v. Stapleton* (1892) 21 Ont. R. 679; *Swift v. Provincial Provident Institution* (1890) 17 Ont. A. R. 66.

#### PART I.

Section 5.—Assuming the power of the Dominion Parliament to enact a general law, applicable to the whole Dominion, requiring insurance companies to obtain a federal license, this does not prevent any provincial legislature from imposing conditions under which such companies shall do business within the province: *Citizens Insurance Company v. Parsons* (1881) L. R. 7 A. C. 96.

Under the New Brunswick Insurance Act (19 Vict. c. 45) a foreign company is prohibited from doing business in the province without a certificate being filed in the Provincial Secretary's office: see *Allison v. Robinson*



(1873) 15 N. B. R. 103; *Jones v. Taylor* (1874) 15 N. B. R. 391. See the Rev. St. Que. Art. 4754; Ont. Insurance Act, 1897; Rev. St. Nova Scotia, c. 127; Rev. St. B. C. (1897) c. 44; Rev. St. Man. (1902) c. 82.

Right to sue foreign companies doing business in Canada: *Richelieu & Ont. Nav. Co. v. Phoenix Ins. Co.* (1886) M. L. R. 2 S. C. 192.

**Section 12.**—Dominion Parliament has authority to require deposit with Minister of Finance: *Re Briton Medical and General Life Association* (1886) 12 Ont. R. 441; *Reg. v. Stapleton* (1892) 21 Ont. R. 679.

Deposit is not money of the Crown, but is held by Minister of Finance in trust for the company: *Maritime Bank v. The Queen* (1889) 17 S. C. R. 657.

A contract to procure fire insurance in some office valid in Canada, means in some company licensed to do business in Canada: *Barrett v. Elliott* (1904) 10 B. C. R. 461.

Foreign company not registered in Canada—Ontario Ins. Act, s. 143; *Burston v. German Union Ins. Co.* (1905) 10 Ont. L. R. 238.

## PART II.

### LIFE INSURANCE.

**Sections 71, 72, 73.** These provisions are of doubtful validity under the decisions of the Privy Council in *Citizens' Insurance Co. v. Parsons* (1881) L. R. 7 A. C. 96; *Bank of Toronto v. Lambe* (1887) 12 A. C. 575, and *Tennant v. Union Bank* (1894) A. C. 31.

“Parliament of the Dominion has no power to authorize a company of its creation to make contracts in Ontario, except such as the legislature of that Province may choose to sanction.” Per *Burton, J.A.*, in *Parsons v. Citizens' Insurance Co.* (1879) 4 Ont. A. R. at p. 100. See also *Billington v. Provincial Insurance Co.* (1876) 24 Gr. 299; *Dear v. Western Assurance Co.* (1877) 41 U. C. Q. B. 553; *Ulrich v. National Insurance Co.* (1877) 42 U. C. Q. B. 141; (1879) 4 Ont. A. R. 84; *Goring v. London Mutual Fire Insurance Co.* (1886) 11 Ont. R. 82. And see *Winding-up Act*, Part III., *infra*.

## PART III.

Section 107. The limitation of period of fire policies is of doubtful constitutionality. See notes to ss. 4, 5, 71, 72, and 73, *supra*.

## PART IV.

## INSURANCE OTHER THAN LIFE, FIRE OR INLAND MARINE.

Section 108. Held (per Sedgewick, J.), in *Cornwall v. Halifax Banking Company* (1902) 32 S. C. R. at p. 448, that the New Brunswick Act, 58 Vict. c. 25, for securing to wives and children the benefit of life insurance applies to accident insurance as well as to straight life insurance.

# ANNOTATIONS.

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## CHAPTER 35.

### Department of Railways and Canals Act.

#### EXECUTION OF CONTRACTS.

Section 15 (How executed). Contracts not in writing: *The Queen v. Henderson*, 28 S. C. 425, affirming 6 Ex. C. 39; *The Queen v. St. John Water Commissioners*, 19 S. C. 125, affirming 2 Ex. C. 78; *Humphrey v. The Queen*, 20 S. C. 591, affirming 2 Ex. C. 386. Executed parol contract, quantum meruit: *Hall v. The Queen*, 3 Ex. C. 373.

Written contract—Warranty—Interest: *Lainé v. The Queen*, 5 Ex. C. 103.

Powers of inspector. Delay: *Mayes v. The Queen*, 23 S. C. 454, affirming 2 Ex. C. 403.

# ANNOTATIONS.

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## CHAPTER 36.

### Government Railways Act.

#### POWERS.

Section 5 (Of minister). Crossing highway. Accumulation of surface water: *Morin v. The Queen*, 20 S. C. 515; affirming 2 Ex. C. 513.

#### INJURIES TO CATTLE.

Section 29 (At large, etc.) Excessive speed. Crossing. Negligence of engineer: *Gilchrist v. The Queen*, 5 Ex. C. 300.

#### WORKING RAILWAY.

Section 34 (Speed). Excessive at level crossing in town: *Connell v. The Queen*, 5 Ex. C. 74.

Section 35 (Moving reversely). Engine and tender not a "train of cars:" *Harris v. The King*, 9 Ex. C. 206.

Section 40 (Carriage): Injury to goods or animals carried: *Lavoie v. The Queen*, 3 Ex. C. 96.

Regulations for carriage: *Ib.*

*Wheatley v. The King*, 9 Ex. C. 222; *Nicholls Chemical Co. v. The King*, 9 Ex. C. 272.

Injury to passenger: *Dube v. The Queen*, 3 Ex. C. 147.

Section 43 (Fare refused). Right to stop over: *Coombs v. The Queen*, 26 S. C. 13, affirming 4 Ex. C. 321.

#### RULES AND REGULATIONS.

Section 49 (Regulations). Carriage of live stock. Owner's risk: *Lavoie v. The Queen*, 3 Ex. C. 96.

#### GENERAL.

Section 55 (Public works): *Martin v. The Queen*, 2 Ex. C. 328; *Connell v. The Queen*, 5 Ex. C. 74. *Leprohon v. The Queen*, 4 Ex. C. 100.

Section 60 (Notice, condition or declaration). Insurance agreement with railway employees: *The Queen v. Grenier*, 30 S. C. 42, reversing 6 Ex. C. 276. But see *Miller v. G. T. Ry. Co.*, [1906] A. C. 187.

Carriage of live stock. Regulations. Crown not relieved: *Lavoie v. The Queen*, 3 Ex. C. 96.

#### PROTECTION OF OFFICERS.

Section 63 (Limitation). Contractor for constructing branch of I. C. Ry. not an employee: *Kearney v. Oakes*, 18 S. C. 148, reversing 20 N. S. 30.

# ANNOTATIONS.

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## CHAPTER 37.

### Railway Act.

#### APPLICATION.

Section 6 (General advantage). Overruling Provincial Acts: *Darling v. Midland Ry. Co.*, 11 Ont. P. R. 32; *Barbeau v. St. Catharines and Niagara Cent. Ry. Co.*, 15 O. R. 586; *In re Columbia and Western Ry. Co.*, 8 B. C. 415; *In re Shore Line Ry.*, 3 Can. Ry. Cas. 277; *G. T. Ry. Co. v. Huard*, Q. R. 1 Q. B. 501.

Provincial Acts not affected: *In re St. C. & N. C. Ry. Co. and Barbeau*, 15 O. R. 583. And see *Toronto Belt Line Ry. Co. v. Lunder*, 19 O. R. 607; *Dickson v. Chateaugay and Nor. Ry. Co.*, Q. R. 17 S. C. 170.

No necessity for declaration where subject matter is obviously beyond powers of local legislature: *Hewson v. Ontario Power Co.*, 36 S. C. 596.

Recital in preamble to private Act not sufficient declaration: *Ib. per Sedgewick and Davies, JJ.*; *Girouard and Idington, JJ.*, contra.

Section 8 (Provincial railways). Where one railway crosses another subject to Act, Board has exclusive jurisdiction: *C. P. Ry. Co. v. G. T. Ry. Co.*, 12 Ont. L. R. 320.

#### RAILWAY COMMISSION.

Section 13 (Question of law). Opinion of Chief Commissioner: *Town of Port Arthur, etc., v. Bell Tel. Co.*, 3 Can. Ry. Cas. 205.

Section 46 (Rule of Court): *In re G. T. Ry. Co.*, 8 Ex. C. 349.

Section 56 (Leave to appeal). Granted when jurisdiction of Board is doubtful: *Montreal St. Ry. Co. v. Montreal Term. Ry. Co.*, 35 S. C. 478.

Judgment on application final: *Williams v. G. T. Ry. Co.*, 36 S. C. 321.

Question of law: *James Bay Ry. Co. v. G. T. Ry. Co.*, 37 S. C. 372.

Section 59 (Works ordered). Contribution to cost. Company "interested or affected:" *Ottawa Elec. Ry. Co. v. City of Ottawa*, 37 S. C. 354.

## COMPANIES.

Section 93 (Calls). Allotment of shares. Want of notice: *Nasmith v. Manning*, 5 S. C. 417, affirming 5 Ont. A. R. 126.

Section 98 (Limited liability). Calls not condition precedent to action: *Moore v. Kirkland*, 5 U. C. C. P. 452.

Not necessary to issue execution in every county through which railway runs: *Jenkins v. Wilcock*, 11 U. C. C. P. 505.

Assignment in insolvency by shareholder: *Denison v. Smith*, 43 U. C. Q. B. 503.

Forfeiture of stock set up as defence to action: *Smith v. Lynn*, 3 U. C. E. & A. 201.

Set-off. Debt against company: *Macbeth v. Smart*, 14 Gr. 298; *Fraser v. Robertson*, 13 U. C. C. P. 184.

Section 102 (Meetings). Calling annual meeting — *Mandamus*: *Hatton v. M. P. & B. Ry. Co.*, M. L. R. 1 S. C. 69.

Section 112 (Disqualification as director). Within legislative jurisdiction of Parliament: *Macdonald v. Riordan*, 30 S. C. 619, affirming Q. R. 8 Q. B. 555. And see *In re Railway Act*, 36 S. C. 136.

Section 136 (Bonds, etc.) Debentures issued in blank. Subsequent insertion of payee's name: *Bank of Toronto v. Cobourg, etc., Ry. Co.*, 7 O. R. 1; *McKenzie v. Montreal, etc., Ry. Co.*, 29 U. C. C. P. 333.

Sections 143, 144 (Securities. Default): *Re Thomson and Victoria Ry. Co.*, 9 Ont. P. R. 119; *Hendrie v. G. T. Ry. Co.*, 2 O. R. 441.

## CONSTRUCTION.

Section 150 (Time limit). Limitation. Prerogative. Waiver: *Montreal Park and Is. Ry. Co. v. Chateaugay and Nor. Ry. Co.*, Q. R. 13 K. B. 256.

Section 151 (General powers). Mortgage of railway property: *Bickford v. Grand Junction Ry. Co.*, 1 S. C. 696, reversing 23 Gr. 302.

Municipal lands may be taken: *In re G. T. Ry. Co. and Ste. Cunégonde*, 4 Can. Ry. Cas. 277.

Sub-section j. (Removing trees). Compensation must be specially demanded: *In re Ont. and Que. Ry. Co. and Taylor*, 6 O. R. 338.

Section 155 (Damage by exercise of powers). Access to station: *Jones v. G. T. Ry. Co.*, 18 S. C. 696, affirming 16 Ont. A. R. 37.

Invitation to enter or alight: *Hall v. McFadden*, S. C. Dig. 1191, 21 N. B. 586; *Edgar v. Nor. Ry. Co.*, 11 Ont. A. R. 452; *Curry v. C. P. Ry. Co.* 17 O. R. 65; *Keith v. Ottawa and N. Y. Ry. Co.*, 3 Ont. L. R. 265; 5 Ont. L. R. 116; *Guay v. Can. Nor. Ry. Co.*, 15 Man. 275; *McGinney v. C. P. Ry. Co.*, 7 Man. 151.

Train too long for platform: *Que. Cent. Ry. Co. v. Lortie*, 22 S. C. 336.

Defective bridge and snow-plough: *Pudsey v. Dom. Atl. Ry. Co.*, 25 S. C. 691, affirming 27 N. S. 498.

Defective machinery. Inspection. *Schwoob v. Mich. Cent. Ry. Co.*, 9 Ont. L. R. 86.

Defective switch: *Rombough v. Balch*, 27 Ont. A. R. 32.

Improper construction: *Braid v. G. W. Ry. Co.*, 10 C. P. 137; *G. W. Ry. Co. v. Fawcett*, 1 Moo. P. C. (N.S.) 101.

Insufficient culvert: *Robitaille v. C. P. Ry. Co.*, Q. R. 15 S. C. 246.

Latent defect in rail: *C. P. R. Co. v. Chalifoux*, 22 S. C. 721.

Negligent work: *Quillinan v. C. S. Ry. Co.*, 6 O. R. 567.

Obstruction of water: *Corp. of Tingwick v. G. T. Ry. Co.*, 9 R. L. 346, 3 Q. L. R. 111; *G. T. R. v. Landry*, 11 R. L. 590.

Unauthorized act of contractor: *Kerr v. Atl. and N. W. Ry. Co.*, 25 S. C. 197.

*Volenti non fit injuria*: *C. A. Ry. Co. v. Hurdman*, 25 S. C. 205.

Gratuitous passenger: *Kenny v. C. P. Ry. Co.*, 5 N. W. T. 420; *Nightingale v. Union Coll. Co.*, 35 S. C. 65, affirming 9 B. C. 453.

Licensee: *Spence v. G. T. Ry. Co.*, 27 O. R. 303; *C. P. Ry. Co. v. Johnson*, 19 R. L. 21.

Injury to lands not taken: *In re Birely and Toronto, H. and B. Ry. Co.*, 28 O. R. 468.

Lowering grade of street: *Bowen v. C. S. Ry. Co.*, 14 Ont. A. R. 1.



Riparian rights: *In re Widder and Buffalo & L. H. Ry. Co.*, 20 U. C. Q. B. 638; *Reg. v. Buffalo & L. H. Ry. Co.*, 23 U. C. Q. B. 208; *N. S. Ry. Co. v. Pion*, 14 App. Cas. 612; *Bigaouette v. N. S. Ry. Co.*, 17 S. C. 363.

Section 157 (Location). Branch lines: *In re Branch lines C. P. Ry. Co.*, 36 S. C. 42.

Extension of terminus: *C. P. Ry. Co. v. Major*, 13 S. C. 233.

Section 158 (Plan, etc.) Rival companies. Provincial and Federal. Expropriation of same land. Precedence: *Pontiac Pac. Ry. Co. v. Hull Elec. Ry. Co.*, Q. R. 11 S. C. 140.

Section 167 (Deviation): *Kingston and Pembroke Ry. Co. v. Murphy*, 17 S. C. 582.

Extension beyond terminus: *Ib.*, *C. P. Ry. Co. v. Major*, 13 S. C. 233.

#### TAKING OR USING LANDS.

Section 172 (Government lands). Included in award: *Bigaouette v. N. S. Ry. Co.*, 17 S. C. 363.

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Section 198 (Increased value). Value of terminus set off: *Paint v. The Queen*, 18 S. C. 718, affirming 2 Ex. C. 149.

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Section 199 (Costs). Not applicable to costs of appeal: *In re Credit Valley Ry. Co. and Spragge*, 24 Gr. 231.

Company's remedy to recover: *In re Foster and G. W. Ry. Co.*, 32 U. C. Q. B. 503.

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Section 204 (Date for award). Death of arbitrator—New appointment: *Shannon v. Montreal Park and Island Ry. Co.*, 28 S. C. 374.

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Section 206 (Death, etc., of arbitrator): *Shannon v. Montreal Park and Island Ry. Co.*, 28 S. C. 374.

Section 207 (Abandonment of expropriation). Must be before lands are taken: *C. P. Ry. Co. v. Ste. Thérèse*, 16 S. C. 606; *In re Haskell and G. T. Ry. Co.*, 7 Ont. L. R. 429.

Lands injuriously affected: *Widder v. Buffalo and L. H. Ry. Co.*, 24 U. C. Q. B. 222.

Third notice: *Ib.* In *re Hooper and E. & H. Ry. Co.*, 12 Ont. P. R. 408.

Section 208 (Disqualification). Ratepayer of city interested: In *re McQuillan and Guelph Junc. Ry. Co.*, 12 Ont. P. R. 294.

Company's engineer: *Widder v. Buffalo and L. H. Ry. Co.*, 24 Q. B. 520.

Surveyor's relation: *Benning v. Atl. and N. W. Ry. Co.*, M. L. R. 6 Q. B. 385.

Section 209 (Appeal from award): In *re Toronto, H. and B. Ry. Co. and Kerner*, 28 O. R. 14.

If taken to High Court no further appeal to Court of Appeal: *Birely v. Toronto, H. and B. Ry. Co.*, 25 Ont. A. R. 88.

Notice. Time: In *re Potter and Central Counties Ry. Co.*, 16 Ont. P. R. 16.

Should be to single judge. *Ibid*: In *re Montreal and Ottawa Ry. Co. and Ogilvie*, 18 Ont. P. R. 120.

Appeal Court should not deal with evidence de novo as a court of first instance: *Atl. and N. W. Ry. Co. v. Wood* (1895), A. C. 257; Q. R. 2 Q. B. 335; *Montreal and Ottawa Ry. Co. v. Bertrand*, Q. R. 2 Q. B. 203; *Montreal and O. Ry. Co. v. Castonguay*, Q. R. 2 Q. B. 207.

New evidence. Procedure: *Pontiac Pac. Junc. Ry. Co. v. Sisters of Charity*, Q. R. 20 S. C. 567.

Procedure in Quebec: *Neilson v. Quebec Bridge Co.*, Q. R. 21 S. C. 329; *Montreal and Ottawa Ry. Co. v. Denis*, Q. R. 2 Q. B. 532.

Section 213 (Compensation in place of land). Dower barred: *Chewett v. G. W. Ry. Co.*, 26 U. C. C. P. 118.

Section 214 (Payment). Interest for delay under s.-s. (4): *Atl. and N. W. Ry. Co. v. Judah*, 23 S. C. 231.

Prescription 20 years. Not barred by company's possession for 10 years extinguishing title: *Ross v. G. T. Ry. Co.*, 10 O. R. 447, followed in *Essery v. G. T. Ry. Co.*, 21 O. R. 224.

Section 215 (Possession). Payment of compensation a condition precedent: *Corp. of Parkdale v. West*, 12 App. Cas. 602, affg. 12 S. C. 250, revg. 12 Ont. A. R. 393 and restoring 8 O. R. 59; 7 O. R. 270: *La Banque d'Hochelaga v. Montreal P. and B. Ry. Co.*, M. L. R. 1 S. C. 150.

Section 217 (Immediate possession). Before payment of price and no work done: *C. P. Ry. Co. v. Ste. Thérèse*, 16 S. C. 606.

Urgency. Requirements of affidavit: *In re Kingston and Pembroke Ry. Co. and Murphy*, 11 Ont. P. R. 304.

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Section 218 (Warrant). Ten days' notice. Exclusion of days of service and return: *In re Ont. Tanners' Supplies Co. and Ont. and Que. Ry. Co.*, 12 Ont. P. R. 563.

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Section 219 (Payment out). Interest. Bank rate: *In re Taylor and Ont. and Que. Ry. Co.*, 11 Ont. P. R. 371; *In re Philbrick and O. and Q. Ry. Co.*, 11 Ont. P. R. 373.

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#### BRANCH LINES.

Section 221 (Powers). See *In re Branch Lines C. P. Ry. Co.*, 36 S. C. 42.

#### CROSSINGS AND JUNCTIONS.

Section 227 (Junctions). Crossing of Provincial and Federal railway: *Credit Valley Ry. Co. v. G. W. Ry. Co.*, 25 Gr. 507.

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Junctions with local railway. Effect of order. Municipal consent: *City of Toronto v. Metropolitan Ry. Co.*, 31 O. R. 367.

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Board may order junction against the will of one company: *Niagara, St. C. and T. Ry. Co. v. G. T. Ry. Co.*, 3 Can. Ry. Cas. 256.

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## HIGHWAY CROSSINGS.

Section 235 (Railway on highway). Road bed below level—Dangerous condition: *G. T. Ry. Co. v. Sibbald*, 20 S. C. 259.

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Section 236 (Level). Approaches to crossing: *Moggy v. C. P. Ry. Co.*, 3 Man. 209.

Section 237 (Crossing highway). As to company's duty to provide watchman, or take other special precautions where condition specially dangerous: *Lake Erie and D. R. Ry. Co. v. Barclay*, 30 S. C. 360.

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Existing highway may be carried over or under railway: *Ottawa Elec. Co. v. City of Ottawa*, 37 S. C. 354.

Application may be made by municipality: *Ibid.*

Or by private person to compel company to construct crossings: *In re Reid and C. A. Ry. Co.*, 4 Can. Ry. Cas. 272.

Company not compellable to construct highway: *Ibid.*

Section 241 (Highway structure). Bridge of required height—Subsequent raising of grade by municipality: *Carson v. Village of Weston*, 1 Ont. L. R. 15.

Section 242 (Approach). Greater inclination by raising bridge: *Fairbanks v. Township of Yarmouth*, 24 Ont. A. R. 273.

## TELEGRAPH, TELEPHONE, ETC., LINES.

Section 244 (Telegraph lines). Contract by railway company with foreign telegraph company for exclusive right to construct and operate: *C. P. Ry. Co. v. Western Union Telegraph Co.*, 17 S. C. 151.

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User. Right of way: *Guthrie v. C. P. Ry. Co.*, 27 Ont. A. R. 64.

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Land on one side of railway: *G. T. Ry. Co. v. Therrien*, 30 S. C. 485.

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Title to land. Possession: *Bolduc v. C. P. Ry. Co.*, Q. R. 23 S. C. 238.

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## FENCES, GATES AND CATTLE GUARDS.

Section 254 (Fences). Imperative. Omission at request of adjacent owner: *Quebec Cent. Ry. Co. v. Pellerin*, Q. R. 12 K. B. 152.

Not obliged to fence on each side of culvert across stream crossed by railway on bridge: *G. T. Ry. Co. v. James*, 31 S. C. 420, reversing 1 Ont. L. R. 127; 31 O. R. 672: Nor against other than adjoining owners: *McLennan v. G. T. Ry. Co.*, 8 U.C.C.P. 411; *Rathwell v. C. P. Ry. Co.*, 25 C. L. J. 468; *Douglass v. G. T. Ry. Co.*, 5 Ont. A. R. 585; *McIntosh v. G. T. Ry. Co.*, 30 U. C. Q. B. 601.

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Unenclosed highway: *Jack v. Ontario S. & H. Ry. Co.*, 14 U. C. Q. B. 328.

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Sub-sec. 2 applies to all public road crossings: *G. T. Ry. Co. v. Hainer*, 36 S. C. 180.

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#### BRIDGES, ETC.

Section 256 (Headway). Car of foreign company forming part of Canadian train too high for overhead bridge: *Atchison v. G. T. Ry. Co.*, 1 Ont. L. R. 168.

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Section 258. Access. Long user: *G. T. Ry. Co. v. Anderson*, 28 S. C. 541, reversing 24 Ont. A. R. 672; 27 O. R. 441; *Jones v. G. T. Ry. Co.*, 18 S. C. 696, affirming 16 Ont. A. R. 37.

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Section 264 (Brakes). Possible failure of air-brakes should be provided against: *Brown v. G. W. Ry. Co.*, 40 U. C. Q. B. 333, affirmed 2 Ont. A. R. 64, and 3 S. C. 159.

Injury to brakeman: *Badgerow v. G. T. Ry. Co.*, 19 O. R. 191.



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Freight trains. Lord Campbell's Act. Procedure: *Makarsky v. C. P. Ry. Co.*, 15 Man. 53.

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Section 274 (Bell and whistle). Failure to signal: *G. T. Ry. Co. v. Rosenberger*, 9 S. C. 311, affirming 8 Ont. A. R. 482; 32 U. C. C. P. 349; *Johnson v. G. T. Ry. Co.*, 21 Ont. A. R. 408, affirming 25 O. R. 64; *C. S. Ry. Co. v. Jackson*, 17 S. C. 316; *Peart v. G. T. Ry. Co.*, 10 Ont. A. R. 191; *Lake Erie and Detroit River Ry. Co. v. Barclay*, 30 S. C. 360; *G. T. Ry. Co. v. Beckett*, 16 S. C. 713, affirming 13 Ont. A. R. 174; *G. T. Ry. Co. v. Anderson*, 28 S. C. 541, reversing 24 Ont. A. R. 672; 27 O. R. 441; *Miller v. G. T. Ry. Co.*, 25 U. C. C. P. 389; *Champaigne v. G. T. Ry. Co.*, 9 Ont. L. R. 589.

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Starting within 80 rods of crossing: *Hollinger v. C. P. Ry. Co.*, 20 Ont. A. R. 244, affirming 21 O. R. 705.

Actual collision with train: *G. T. Ry. Co. v. Rosenberger*, 9 S. C. 311; *C. A. Ry. Co. v. Henderson*, 29 S. C. 632, affirming 25 Ont. A. R. 437; *G. T. Ry. Co. v. Sibbald*, 20 S. C. 259, affirming 18 Ont. A. R. 184.

Shunting. Crossing highway: *C. A. Ry. Co. v. Henderson*, 29 S. C. 632; *Hollinger v. C. P. Ry. Co.*, supra. In company's yard: *Casey v. C. P. Ry. Co.*, 15 O. R. 574; *Collier v. Mich. Cent. Ry. Co.*, 27 Ont. A. R. 630.

Not required at siding: *N. B. Ry. Co. v. Vanwart*, 17 S. C. 35, reversing 27 N. B. 59. But is at level crossing by common law: *Ibid.* And not at track crossing for access to station: *Bennett v. G. T. Ry. Co.*, 3 O. R. 446. Nor shunting in company's yard:

Casey v. C. P. Ry. Co., 15 O. R. 574. But see cases in next preceding paragraph.

Company not liable though warning not given: Weir v. C. P. Ry. Co., 16 Ont. A. R. 100; Johnston v. Northern Ry. Co., 34 Q. B. 432.

Dangerous crossing. Special precautions: Hollinger v. C. P. Ry. Co., 20 Ont. A. R. 244, affirming 21 O. R. 705; Moyer v. G. T. Ry. Co., 3 Can. Ry. Cas. 1.

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Injury to employee: C. S. Ry. Co. v. Jackson, *supra*.

Section 275 (Speed in cities). Track properly fenced: G. T. Ry. Co. v. McKay, 34 S. C. 81; Quebec v. Lake St. John Ry. Co. v. Girard, Q. R. 15 K. B. 48.

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Section 276 (Train reversed). Car moving backward in station yard should have light or watchman at rear: C. P. Ry. Co. v. Boisseau, 32 S. C. 424.

Engine with tender is a train: Hollinger v. C. P. Ry. Co., 20 Ont. A. R. 244, affirming 21 O. R. 705.

Applies to operations in station grounds: Bennett v. G. T. Ry. Co., 3 O. R. 446.

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Section 277 (Railway crossings). Crossing after signal line not clear: Graham v. G. W. Ry. Co., 41 U. C. Q. B. 324.

Section 278 (Rail level crossings). Train must stop regardless of delay or inconvenience: Brown v. G. W. Ry. Co., 40 Q. B. 333, affirmed 2 Ont. A. R. 64 and 3 S. C. 159.

Only vis major will excuse failure: *Ibid*.

Other apparatus should be furnished in case air-brakes may fail to act: *Ibid*.

Section 281 (Fare refused). Expulsion for non-delivery of ticket; company not liable: *G. T. Ry. Co. v. Beaver*, 22 S. C. 498, reversing 20 Ont. A. R. 476.

Right to "stop over:" *Coombs v. The Queen*, 26 S. C. 13, affirming 4 Ex. C. 321.

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Section 282 (Injuries on platform, etc.). Passenger in baggage car: *Watson v. Northern Ry. Co.*, 24 U. C. Q. B. 98.

On platform. Crowded car: *Burriss v. Père Marquette Ry. Co.*, 9 Ont. L. R. 259.

Section 283 (Baggage). Unclaimed. Company's duty: *Pelland v. C. P. Ry. Co.*, M. L. R. 7 S. C. 131.

Section 284 (Traffic). Special agreement to protect: *G. T. Ry. Co. v. Fitzgerald*, 5 S. C. 204, affirming 4 Ont. A. R. 601; 28 U. C. C. P. 582.

Connecting lines. Contract for through carriage: *G. T. Ry. Co. v. McMillan*, 16 S. C. 543; *Nor. Pac. Ry. Co. v. Grant*, 24 S. C. 546; *Gauthier v. C. P. Ry. Co.*, Q. R. 3 Q. B. 136; *Mason v. G. T. Ry. Co.*, 37 U. C. Q. B. 163.

Connecting lines. Dutiable goods: *Fraser v. G. T. Ry. Co.*, 26 U. C. Q. B. 488.

Connecting lines. Loss by fire in warehouse: *Lake Erie & D. R. Ry. Co. v. Sales*, 26 S. C. 663.

Carriage of animals. Loss of dog: *McCormack v. G. T. Ry. Co.*, 6 Ont. L. R. 577.

Carriers and warehousemen: *O'Neill v. G. W. Ry. Co.*, 7 U. C. C. P. 203; *McCrosson v. G. T. Ry. Co.*, 23 U. C. C. P. 107; *Richardson v. C. P. Ry. Co.*, 19 O. R. 369; *Mason v. G. T. Ry. Co.*, 37 U. C. Q. B. 163; *Milloy v. G. T. Ry. Co.*, 21 Ont. A. R. 404, reversing 23 O. R. 454.

Deficiency in goods delivered: *Hall v. G. T. Ry. Co.*, 34 U. C. Q. B. 517; *Taylor v. G. T. Ry. Co.*, 24 U. C. C. P. 582; *Horseman v. G. T. Ry. Co.*, 31 U. C. Q. B. 535.

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Loss by fire: *Moffatt v. G. T. Ry. Co.*, 15 U. C. C. P. 392; *Brodie v. Nor. Ry. Co.*, 6 O. R. 180.

Section 284, s.-s. 7 (Notice, condition, declaration). Act prohibiting contract for relief from liability *intra vires*: *In re Railway Amendment Act*, 36 S. C. 136.

Liability limited by special agreement: *Robertson v. G. T. Ry. Co.*, 24 S. C. 611; *G. T. Ry. Co. v. McMillan*, 16 S. C. 543, reversing 15 Ont. A. R. 14.

Reduced rate of carriage—Tariff: *Cobban v. C. P. Ry. Co.*, 23 Ont. A. R. 115, affirming 26 O. R. 732.

Party injured must have knowledge of condition: *Bate v. C. O. Ry. Co.*, 18 S. C. 697; But see *Coombs v. The Queen*, 26 S. C. 13, affirming 4 Ex. C. 321.

Special contract: *Grenier v. The Queen*, 30 S. C. 42, overruling *Vogel v. G. T. Ry. Co.*, 11 S. C. 612; *Ferguson v. G. T. Ry. Co.*, Q. R. 20 S. C. 54; *Brassell v. G. T. Ry. Co.*, Q. R. 11 S. C. 150; *Packard v. C. P. Ry. Co.*, M. L. R. 5 S. C. 64.

Free pass: *Bicknell v. G. T. Ry. Co.*, 26 Ont. A. R. 431.

Does not apply to foreign railway operated in Canada by Canadian Co: *Macdonald v. G. T. Ry. Co.*, 31 O. R. 663.

Carriage beyond line: *C. P. Ry. Co. v. Charbonneau*, M. L. R. 6 Q. B. 287; *Gauthier v. C. P. Ry. Co.*, Q. R. 3 Q. B. 136; and see *St. Mary's Creamery Co. v. G. T. Ry. Co.*, 5 Ont. L. R. 742; 8 Ont. L. R. 1; *Ferris v. Can. Nor. Ry. Co.*, 15 Man. 134.

Section 288 (Packing). Connecting railways—Pleading: *Clegg v. G. T. Ry. Co.*, 10 O. R. 708.

Keeping spaces filled: *Misener v. Mich. Cent. Ry. Co.*, 24 O. R. 411.

Injury to employee: *LeMay v. C. P. Ry. Co.*, 17 Ont. A. R. 293, affirming 18 O. R. 314.

Omission: *Rice v. Ottawa & G. V. Ry. Co.*, Q. R. 6 S. C. 33.

Section 294 (Animals). Injury to cattle at large: *G. T. Ry. Co. v. James*, 31 S. C. 420, reversing 1 Ont. L. R. 127; 31 O. R. 672; *Hurd v. G. T. Ry. Co.*, 15 Ont. A. R. 58; *Thomson v. G. T. Ry. Co.*, 22 Ont. A. R. 453; *Daniels v. G. T. Ry. Co.*, 11 Ont. A. R. 471; *Nixon v. G. T. Ry. Co.*, 23 O. R. 124; *Lebu v. G. T. Ry. Co.*, 12 Ont. L. R. 590; *Bacon v. G. T. Ry. Co.*, 12 Ont. L. R. 196.

Failure to signal: *Shields v. G. T. Ry. Co.*, 7 U. C. C. P. 111; *Tyson v. G. T. Ry. Co.*, 20 U. C. Q. B. 256; *Pontiac Pac. Junc. Ry. Co. v. Brady*, M. L. R. 4 Q. B. 346.

At farm crossings: *Bender v. C. S. Ry. Co.*, 37 U. C. Q. B. 25; *Plester v. G. T. Ry. Co.*, 32 O. R. 55; *Murphy v. G. T. Ry. Co.*, 1 O. R. 619; *McMichael v. G. T. Ry. Co.*, 12 O. R. 547; *Dunsford v. Michigan Cent. Ry. Co.*, 20 Ont. A. R. 577.

Fencing. Owners not adjoining: *McLennan v. G. T. Ry. Co.*, 8 U. C. C. P. 411; *Rathwell v. C. P. Ry. Co.*, 25 C. L. J. 468; *Douglass v. G. T. Ry. Co.*, 5 Ont. A. R. 585; *McIntosh v. G. T. Ry. Co.*, 30 U. C. Q. B. 601.

Defective fences: *Henderson v. G. T. Ry. Co.*, 20 U. C. Q. B. 602; *Wilson v. Nor. Ry. Co.*, 28 U. C. Q. B. 274.

Defective cattle guards: *Phillips v. C. P. Ry. Co.*, 1 Man. 110; *Cross v. C. P. Ry. Co.*, Q. R. 2 S. C. 365 reversed by 3 Q. B. 170.

"In charge:" *Ferris v. G. T. Ry. Co.*, 16 U. C. Q. B. 474; *Simpson v. G. W. Ry. Co.*, 17 U. C. Q. B. 57; *Thompson v. G. T. Ry. Co.*, 18 U. C. Q. B. 92; *Cooley v. G. T. Ry. Co.*, 18 U. C. Q. B. 96; *Markham v. G. W. Ry. Co.*, 25 U. C. Q. B. 572.

Company should use ordinary care: *Campbell v. G. W. Ry. Co.*, 15 U. C. Q. B. 498; *Hurd v. G. T. Ry. Co.*, 15 Ont. A. R. 58.

Highway crossing: *Moggy v. C. P. Ry. Co.*, 3 Man. 209.

Unlawfully on highway: *Simpson v. G. W. Ry. Co.*, 17 U. C. Q. B. 57; *C. P. Ry. Co. v. Eggleston*, 36 S. C. 641.

Unlawfully on track: *Westbourne Cattle Co. v. Man. & N. W. Ry. Co.*, 6 Man. 553; *Ferris v. C. P. Ry. Co.*, 9 Man. 501; *Groulx v. C. P. Ry. Co.*, Q. R. 3 S. C. 81; *Langevin v. C. P. Ry. Co.*, Q. R. 5 S. C. 127; *G. T. Ry. Co. v. Campbell*, Q. R. 3 Q. B. 570.

Section 297 (Weeds and grass). Weeds on side track: *Wood v. C. P. Ry. Co.*, 30 S. C. 110.

Fire caused by rubbish on railway property: *G. T. Ry. Co. v. Rainville*, 29 S. C. 201.

Section 298 (Fire). Caused by running on up grade in strong wind: *N. S. Ry. Co. v. McWillie*, 17 S. C. 511.

Evidence. Defective engine or hot box: *Sénésac v. Central Vermont Ry. Co.*, 26 S. C. 641, affirming Q. R. 9 S. C. 319; *C. S. Ry. Co. v. Phelps*, 14 S. C. 132; *C. A. Ry. Co. v. Morley*, 15 S. C. 145.

Cumbustible material on railway: *G. T. Ry. Co. v. Rainville*, 29 S. C. 201, affirming 25 Ont. A. R. 242; *Grant v. C. P. Ry. Co.*, 36 N. B. 528.

Use of wood for fuel: *N. B. Ry. Co. v. Robinson*, 11 S. C. 688; *C. A. Ry. Co. v. Noxley*, 15 S. C. 145.

Precautions. Normal use of road: *C. P. Ry. Co. v. Roy* (1902), A. C. 220, reversing Q. R. 9 Q. B. 551; *Fournier v. C. P. Ry. Co.*, 33 N. B. 565; *Wood v. S. E.*

Ry. Co., 13 R. L. 567; Jodoin v. S. E. Ry. Co., M. L. R. 1 S. C. 316; G. T. Ry. Co. v. Meegan, M. L. R. 1 Q. B. 364.

Joint ownership: Lemieux v. Que. & Lake St. J. Ry. Co., Q. R. 3 S. C. 192. And see G. T. Ry. Co. v. Huard, 36 S. C. 655.

Section 302 (Summary conviction). Conviction quashed where offender was summoned, not arrested: Reg v. Hughes, 26 O. R. 486.

#### ACTION FOR DAMAGES.

Section 306 (Prescription). "Damage" must be done by railway itself; Per Gwynne, J.: N. S. Ry. Co. v. McWillie, 17 S. C. 511; McCallum v. G. T. Ry. Co., 30 U. C. Q. B. 122; 31 U. C. Q. B. 527.

Injury "by reason of operation." "Continuing damage:" Browne v. Brockville & Ottawa Ry. Co., 20 U. C. Q. B. 202; Kerr v. Atl. & N. W. Ry. Co., 25 S. C. 197; Chaudière Machine & Foundry Co. v. C. A. Ry. Co., 33 S. C. 11; Brown v. G. T. Ry. Co., 24 U. C. Q. B. 350; Patterson v. G. W. Ry. Co., 8 U. C. C. P. 89; Kelly v. Ottawa St. Ry. Co., 3 Ont. A. R. 616.

Injury to workman employed in construction: Marcheterre v. Ont. & Que. Ry. Co., Q. R. 4 S. C. 397.

Common law injury. Management of fire: Prendergast v. G. T. Ry. Co., 25 U. C. Q. B. 193.

Cutting timber: McArthur v. Nor. & Pac. Junc. Ry. Co., 15 O. R. 733; 17 Ont. A. R. 86.

Personal injuries to passengers: May v. Ont. & Que. Ry. Co., 10 O. R. 70; Conger v. G. T. Ry. Co., 13 O. R. 160.

Acts of omission: Zimmer v. G. T. Ry. Co., 19 Ont. A. R. 693; Findlay v. C. P. Ry. Co., 5 N. W. T. 143.

Applies to negligence of company as warehousemen: Walters v. C. P. Ry. Co., 1 N. W. T. Rep. 88.

Cattle guards: Levesque v. N. B. Ry. Co., 29 N. B. 588.

Injury to cattle: Anderson v. G. T. Ry. Co., 7 L. N. 150.

Sub-section 4 (inspection). Protection of crossing: Girouard v. C. P. Ry. Co., Q. R. 19 S. C. 529.

#### BY-LAWS, RULES AND REGULATIONS.

Section 307 (Regulations). Company liable for injury caused by employee disobeying orders: C. P. Ry. Co. v. Lawson. S. C. Dig. 1217.

Company liable to engineman injured in obeying order of conductor who violated rule: *G. T. Ry. Co. v. Miller*, 32 S. C. 454.

But not to conductor who disobeyed running rules and was injured: *Fawcett v. C. P. Ry. Co.*, 32 S. C. 721, affirming 8 B. C. 393.

#### TOLLS.

Section 314 (Authorized tolls): *Duthie v. G. T. Ry. Co.*, 4 Can. Ry. Cas. 304.

Reasonable rates: *Cooperage Stock Rates Case*, 3 Can. Ry. Cas. 421; *United Factories v. G. T. Ry. Co.*, 3 Can. Ry. Cas. 424.

Section 315 (Tolls). Discrimination. *Manufacturers' Coal Rates Case*, 3 Can. Ry. Cas. 438; *Cedar Lumber Products Case*, 3 Can. Ry. Cas. 412; *Brant Milling Co. Case*, 4 Can. Ry. Cas. 259; *Tower Oiled Clothing Co. Case*, 3 Can. Ry. Cas. 417.

Section 317, s.-s. 6 (Express companies): *Vickers Express Co. v. C. P. Ry. Co.*, 13 Ont. A. R. 210.

Section 321 (Freight classification). Lateral line: *Almonte Knitting Co. Case*, 3 Can. Ry. Cas. 441; *Fruit Growers Case*, 3 Can. Ry. Cas. 430; *Sydenham Glass Co. Case*, 3 Can. Ry. Cas. 409.

Tariff approved by order in council—Agreement to carry at reduced rate in consideration of non-liability for damage: *Cobban v. C. P. Ry. Co.*, 23 Ont. A. R. 115, affirming 26 O. R. 732.

Section 340 (Carriers). Contract for non-liability. Reduced charge: *Drainville v. C. P. Ry. Co.*, Q. R. 22 S. C. 480. Conditions in bill of lading: *Lafontaine v. G. T. Ry. Co.*, Q. R. 26 S. C. 455.

Bill of lading. Reasonable conditions: *Gélinas v. C. P. Ry. Co.*, Q. R. 11 S. C. 253.

Section 342 (Special rates). Procedure: *In re Can. Freight Assoc. and Industrial Corporations*, 3 Can. Ry. Cas. 427.

#### AGREEMENTS.

Section 361 (Amalgamation). Bond of provisional directors of one company: *Town of Whitby v. G. T. Ry. Co.*, 32 O. R. 99.

By federal Act. Operation of former provincial Acts; *Jones v. Grand Cent. Ry. Co.*, 46 U. C. Q. B. 250; *Fargey v. Grand Junction Ry. Co.*, 4 O. R. 232; *Grand Junction Ry. Co. v. County of Peterborough*, 6 Ont. A. R. 339; *County of Halton v. G. T. Ry. Co.*, 19 Ont. A. R. 252, affirmed by 21 S. C. 716.

Section 364 (Traffic). Authorizes lease to foreign company with transfer of rights and privileges. *Michigan Cent. Ry. Co. v. Weallans*, 24 S. C. 309, reversing 21 Ont. A. R. 297.

Contract for carriage beyond terminus: *G. T. Ry. Co. v. McMillan*, 16 S. C. 543, reversing 15 Ont. A. R. 14.

With steamship Co.: *Owen Sound S. S. Co. v. C. P. Ry. Co.*, 17 O. R. 691.

Joint employees: *G. T. Ry. Co. v. Huard*, 36 S. C. 655.

Operating another road. Agents. Misfeasance: *Kenny v. C. P. Ry. Co.*, 3 N. W. T. 420.

#### INSOLVENT COMPANIES.

Section 365 (Scheme). Filing scheme—Application to restrain action: *In re Atl. & L. S. Ry. Co.*, 9 Ex. C. 283.

Creditors' rights. Objection to scheme: *In re Baie des Chaleurs Ry. Co.*, 9 Ex. C. 386.

Application to confirm—Possession of railway—Security: *In re Atl. & L. S. Ry. Co.*, 9 Ex. C. 413; *In re G. N. Ry. Co.*, 9 Ex. C. 337.

#### OFFENCES AND PENALTIES.

Section 408 (Walking on track). Trespasser cannot maintain action: *G. T. Ry. Co. v. Anderson*, 28 S. C. 541, reversing 24 Ont. A. R. 672; 27 O. R. 441; *Wilson v. G. T. Ry. Co.*, 2 L. N. 45.

Section 414 (Liquor to employees). Employee accessory to offence: *Marshall v. Cent. Ont. Ry. Co.*, 28 O. R. 241.

Section 427 (Not provided.) Intra vires. Workmen's Compensation Act: *Curran v. G. T. Ry. Co.*, 25 Ont. A. R. 407.

Employee a "person injured:" *LeMay v. C. P. Ry. Co.*, 17 Ont. A. R. 293, affirming 18 O. R. 314.



# ANNOTATIONS.

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## CHAPTER 39.

### Public Works of Canada.

Section 4 (2). The Minister in the management of the public works of Canada is not an officer to whom negligence can be imputed to bind the Crown under the Exchequer Court Act, sec. 16 (c) (now sec. 20 (c) of ch. 140 R. S. C., (1906): *McHugh v. The Queen* (1900) 6 Ex. C. R. 374; *Hamburg American Packet Co. v. The King* (1901) 7 Ex. C. R. 150.

Section 9 (h). Navigation improvements may constitute such part of a navigable river where the improvements are being made a public work during the execution of such improvements. *Secus*, after the improvements are completed: *Hamburg American Packet Co. v. The King* (1901) 7 Ex. C. R. 150, affirmed on appeal (1902) 33 S. C. R. 252.

Section 12. See Consolidated Revenue and Audit Act, R. S. C. 1906, c. 24, s. 3.

Section 13. See *Wood v. The Queen* (1877) 7 S. C. R. 634, where it was held that, when Parliament has not authorized the expenditure, no petition of right will lie for work done at the request of the Department, but which was not demanded by the necessities of the public service. And see reference under sec. 12, *supra*.

Section 18. Where a contract is executed and the Crown has received the benefit of it, the contract may be enforced though not in writing: *Wood v. The Queen* (1877) 7 S. C. R. 634; *Hall v. The Queen* (1893) 3 Ex. C. R. 373; *Henderson v. The Queen* (1897) 6 Ex. C. R. 39; (1898) 28 S. C. R. 425.

And see notes to The Petition of Right Act (R. S. C. 1906 c. 142), and The Exchequer Court Act (R. S. C. 1906 c. 140).

# ANNOTATIONS.

## CHAPTER 40.

### Government Tolls.

#### LIEN.

**Section 6 (First charge).** Lien only applies to lumber for which charges became due: *Merchants Bank of Canada v. The Queen*, S. C. Dig. 241, reversing 1 Ex. C. 1.

Mortgage on lumber — Mortgagor in possession — Agreement by mortgagor for special tolls — Knowledge of mortgagee: *Ib.*

The Crown is not a common carrier of the lumber passed through the slides: *The Queen v. McFarlane*, 7 S. C. 216.

The payment of tolls does not create a contract for carriage by the Crown of the lumber through the slides: *Ib.*

**Section 7 (Seizure).** Seizure of lumber mortgaged — Special agreement by mortgagor in possession — Knowledge of mortgagee — Seizure of timber other than that for which tolls were due: *Merchants Bank of Canada v. The Queen*, S. C. Dig. 241, reversing 1 Ex. C. 1.

# ANNOTATIONS.

## CHAPTER 41.

### Militia and Defence.

- Section 8. The rock upon which the citadel of Quebec rests is not a "public work" within the meaning of sec. 16 (c) (now sec. 20 (c) of ch. 140, R. S. C. 1906), of the Exchequer Court Act: Per Taschereau, J., in *City of Quebec v. The Queen* (1894) 24 S. C. R. at p. 448. But, semble, the citadel itself is: See per Burbidge, J., in same case (1891) 2 Ex. C. R. 271.—A rifle range under the control of the Department is not a public work within sec. 16 (c) supra: *Larose v. The King* (1901) 31 S. C. R. 206, affirming (1900) 6 Ex. C. R. 425. And see notes to Public Works Act, ante.
- Section 49. A lieutenant-colonel of militia was held not personally liable for price of clothing ordered by him for his men: *McIlderry v. Baldwin* (1840) 6 U. C. Q. B. (O. S.) 31.
- Section 56. Officers of a regimental mess held not liable personally for debt contracted by their messman without their authority: *Sutherland v. Sparke* (1841) 6 U. C. Q. B. (O. S.) 103.
- Section 74. As to general applicability of Imperial Military enactments: See *Holmes v. Temple* (1882) 8<sup>Q</sup> L. R. 351.
- Section 83. As to sufficiency of requisition by justices: see *Crewe-Read v. County of Cape Breton* (1887) 14 S. C. R. 8.
- Section 89. Action against municipality for expenses of militia may be brought by officer commanding the corps: *Crewe-Read v. County of Cape Breton* (1887) 14 S. C. R. 8. In this case it was also held that where the commanding officer had died the suit could be continued by his personal representative.
- Section 124. Under sec. 48 of the Volunteer Militia Act, 1863, it was held that the commanding officer of a corps might replevy band instruments in the wrongful possession of the president of the band committee: *Lewis v. Teale* (1871) 32 U. C. Q. B. 108.

# ANNOTATIONS.

## CHAPTER 45.

### Fisheries and Fishing.

**Section 4.** Section 91 of The B. N. A. Act does not convey to the Dominion any proprietary rights in respect of fisheries or fishing, although the legislative jurisdiction conferred by that section enables it to affect those rights to an unlimited extent, short of transferring them to others. Whatever proprietary rights in relation to fisheries were previously vested in private individuals or in the provinces respectively remained untouched by that enactment: *Attorney-General for the Dominion of Canada v. Attorney-General of the Provinces of Ontario, Quebec and Nova Scotia* (1898) A. C. 700.

Sections 91 and 92 of the B. N. A. Act, read together, empower the Dominion to dispose of provincial Crown lands, and, therefore, of a provincial foreshore, for the purposes of a transcontinental railway, connecting several provinces: *Attorney-General for British Columbia v. Canadian Pacific Ry. Co.* (1906) A. C. 204.

The Dominion Parliament has power under B. N. A. Act s. 91, s.-s. 12, to enact all such general laws as enure as well to the benefit of the owners of the fisheries as to the public at large, who are interested in the fisheries as a source of national or provincial wealth: *Reg. v. Robertson* (1882) 6 S. C. R. 52. See on this point, *Attorney-General for the Dominion of Canada v. Attorneys-General of the Province of Ontario, &c.* (1898) A. C. 700. See also *Young v. Harnish* (1904) 37 N. S. R. 213.

The riparian owners of a non-navigable water, or pond, the bed of which was granted to them or their auteurs prior to Confederation, have the exclusive right of fishing therein: *Tétreault v. Lewis* (1900) Q. R. 19 S. C. 257.

**Section 8.** A tax by way of license as a condition of the right to fish is within the powers conferred on the Dominion by sub-secs. 3 and 12 of sec. 91, the B. N. A. Act. Similar powers are conferred upon the provincial legislatures

by sec. 92, sub-sec. 2 of B. N. A. Act: *Attorney-General for Canada v. Attorney-General of Ontario, Quebec and Nova Scotia* (1898) A. C. 700.

Section 9, sub-sec. 8. As to regulations and restrictions, see notes to secs. 53 and 54 *infra*.

Section 47, sub-sec. 7. See *The King v. Chandler* (1903) 39 C. L. J. 253 (Co. Court); also in 6 Can. Cr. C. 308.

Section 47, sub-sec. 8. Possession of illegal appliances for catching salmon—Conviction for: *The King v. Fraser* (1903) 36 N. B. R. 109.

Section 53. Even if a harbour does not belong to the Dominion, the Attorney-General for Canada may restrain any interference with, or injury to, the public rights of navigation or fishing in such harbour: *St. John Gas Light Co. v. The Queen* (1895) 4 Ex. C. R. 326. As to St. John Harbour see more particularly *City of St. John v. Wilson* (1902) 2 N. B. Eq. 398.

Dominion fishery officers may regulate the kinds of nets and traps to be used on the provincial foreshores, and control the manner of fishing, but cannot exact a license fee for fishing privileges there: *The King v. Chandler* (1903) 6 Can. Cr. C. 308. But see note to sec. 8, *supra*, and see *Bayer v. Kaiser* (1894) 26 N. S. R. 280.

Section 54. Fishing regulations and restrictions are within the exclusive competence of the Dominion: *Attorney-General for the Dominion of Canada v. Attorneys-General for Ontario, Quebec and Nova Scotia* (1898), A. C. 700.

Regulations for prohibiting the exposure and sale of American oysters in Canada during close season, *ultra vires* of Governor-General in Council: *Ex parte Turner* (1895) 33 N. B. R. 2.

Sections 61 and 63. See *Arnott v. Bradly* (1873) 23 U. C. C. P. 1.

Section 88. See *The Queen v. St. John Gas Light Co.* (1895) 4 Ex. C. R. 326.

Section 94. The term "temporarily domiciled" used in regulations of August 1st, 1904, made under sec. 18 R. S. C. c. 95, was construed to exclude a foreigner coming to Canada for successive seasons on fishing trips and occupying for a few weeks only in each year, a building

he had erected for use as a fishing camp. This provision of the regulations was as follows:—"Foreigners when temporarily domiciled in Canada and employing Canadian boats and boatmen, shall be exempted from the regulations requiring permits:" see *The King v. Townsend* (1901) 5 Can. Cr. C. 143.

Imprisonment may be adjudged under the Act for default in payment of a penalty imposed without awarding a distress: *The King v. Fraser* (1903) 36 N. B. R. 109.

**Section 103.** An appeal lies under Criminal Code sec. 749 from a conviction made under the penalty sections of this Act, notwithstanding the special appeal to the Minister herein provided. The latter appeal may be taken after a disposal of an appeal to the County Court: *The King v. Townsend* (1901) 5 Can. Cr. C. 143.

The Minister has no power under this section to remit the costs of a conviction made under the Act: *Ex parte Gilbert* (1904) 36 N. B. R. 492.

# ANNOTATIONS.

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## CHAPTER 46.

### Sea Fisheries and Fishing Vessel Bounties.

**Section 2.** Defendants prosecuted fishing by means of brush-wears and traps. The wears were formed by brush leaders from the shore with a pound at the extreme end. At low water the wears were dry, and at neap-tide there would be some four feet of water therein. The traps were constructed by means of a leader from the shore and a pound at the end formed by a netting stretched on poles or stakes set upright in the bed or bottom of the water. Boats were sometimes, but not always, used to take the fish from the wears and traps. Held, that fishing by such means was not "deep-sea fishing" within the meaning of R. S. C. c. 96, and the regulations made thereunder by the Governor-General in Council and the instructions issued by the Minister of Marine and Fisheries in the year 1891; and that the defendants were not entitled to bounty as provided by the said Act: *The Queen v. Eldridge* (1895) 5 Ex. C. R. 38.

# ANNOTATIONS.

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## CHAPTER 47.

### Customs and Fisheries Protection.

Section 10. (Illegal fishing by foreign vessels). At the time of her seizure by a Dominion fishery protection cruiser for infringing the Convention of 1818 and the Fishery Act by taking fish within the three-mile limit, an American schooner had freshly-caught fish upon her deck, and there was every indication that the crew had been recently engaged in fishing. The only defence offered was that the fish had been caught for food. Held, that the vessel, her tackle, stores and cargo, should be forfeited: *The Wampatuck* (1870) Young's Ad. D. 75: see also the *A. H. Wanson*, Ibid. 83; and the *J. H. Franklin*, Ibid. 89.

Where fish had been enclosed in a seine more than three miles from the coast of Nova Scotia, and the seine pursed up and secured to a foreign vessel, and the vessel was afterwards seized with the seine still so attached, within the three-mile limit, her crew engaged in the act of bailing the fish out of the seine:—Held (Strong, C.J. and Gwynne, J., dissenting), that the vessel so seized was "fishing" in violation of the Convention of 1818, between Great Britain and the United States, and of the Imperial Act, 59 Geo. III. c. 38, and of R. S. Canada c. 94, and was consequently liable, with her cargo, tackle, rigging, apparel, furniture and stores, to be condemned and forfeited: *Ship Frederick Gerring, Jr. v. The Queen* (1896) 27 S. C. R. 271.

Semble, that coming into the territorial waters of Canada to cure fish caught outside the limits of such waters will subject the offending vessel to forfeiture: *The King v. The Ship Samoset* (1904) 9 Ex. C. R. 348.

Burden of proving a license to fish is on the defendants: *The Queen v. Ship Henry L. Phillips* (1895) 4 Ex. C. R. 419, affirmed (1895) 25 S. C. R. 691.

The "three-mile limit" does not apply to the waters of the great lakes between Canada and the



United States, the territorial limits of both countries being determined by the international boundary line. . . . An American vessel fishing without license on the Canadian side of boundary line is subject to seizure and condemnation under this Act: *The Grace* (1894) 4 Ex. C. R. 283.

Section 14. (Proceedings for penalties). Jurisdiction of Exchequer Court. The penalty "not exceeding two hundred dollars and not less than fifty dollars," mentioned in sec. 192 of The Customs Act as recoverable before "two justices of the peace or any other magistrate having the power of two justices of the peace," cannot be sued for in the Exchequer Court of Canada (*Barraclough v. Brown* [1897], A. C. 615, referred to): *The King v. Lovejoy* (1905) 9 Ex. C. R. 377.

Such penalties are not a "debt," and there is no common law liability for them: *Ibid.* at p. 383. See the Customs Act (ss. 102 and 265) as annotated *infra*.

Section 24 (Acting officer entitled to notice): *Wadsworth v. Murphy* (1844) 1 U. C. Q. B. 190. Damages cannot be recovered against the Crown for wrongful seizure by a Customs officer: *Julien v. The Queen* (1896) 5 Ex. C. R. 238.

Section 28 (Limitation of action for penalties). Where it appears upon the record in a penal action that it is brought too late, the defendant may take advantage of the objection without having specially pleaded to it: *Mewburn v. Street* (1862) 21 U. C. Q. B. 498.

# ANNOTATIONS.

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## CHAPTER 48.

### Customs.

Section 2, sub-sec. 2 (Interpretation). Where the interpretation is doubtful, construction should be in favour of importer: *The Queen v. J. C. Ayer Co.* (1887) 1 Ex. C. R. 232.

But see *The King v. Algoma Central Railway* (1902) 32 S. C. R. 277, where it is laid down that a taxing Act is not to be construed differently from any other statute.

#### APPLICATION OF CONSOLIDATED REVENUE AND AUDIT ACT.

Section 12. While the court has no discretion under the Customs Act to remit a penalty, the Governor in Council has under the Audit Act: *The Queen v. Fitzgibbon & Co.* (1900) 6 Ex. C. R. at p. 385.

#### REPORT AND ENTRY INWARDS.

Section 14. Excuse of stress of weather: *Attorney-General v. Spafford* (1831) Dra. 320.

Sections 16 and 18. Entry without prescribed oath not a due entry to give the right to unlade: *Reg. ex rel. Attorney-General v. Brunskill* (1852) 8 U. C. Q. B. 546.

Where nothing has been done by the master to show an intent to defraud the Customs, a vessel entering a port for shelter, and before reaching a place of safety there, has not "arrived." . . . False statements regarding port of destination and character of cargo, which would subject master of vessel to a penalty under s. 186, will not support an information claiming forfeiture of the cargo for his not having made a report in writing under s. 16: *The Queen v. MacDonell* (1883) 1 Ex. C. R. 99.

Section 20. When duty payable: *Canada Sugar Refining Co. v. The Queen* (1898) A. C. 735; 27 S. C. R. 395; 5 Ex. C. R. 177.

Section 28. Goods in warehouse at risk of owner. Crown held not liable for loss of jewelry while in examining warehouse: *Corse v. The Queen* (1892) 3 Ex. C. R. 13.

#### VALUATION FOR DUTY.

Sections 40, 41, 42, and 43. The rule for determining value for duty is not one that can be universally applied. When the goods imported have no market value in the usual and ordinary commercial acceptance of the term in the country of their production or manufacture, or where they have no such value for home consumption, their value for duty may be determined by reference to the fair market value for home consumption of like goods sold under like conditions: *Smith v. The Queen* (1891) 2 Ex. C. R. 417. See also *Vacuum Oil Co. v. The Queen* (1890) 2 Ex. C. R. 234; *The Queen v. J. C. Ayer Co.* (1887) 1 Ex. C. R. 232; *Attorney-General v. Thompson* (1855) 4 U. C. C. P. 548.

The form in which the material is imported constitutes the discriminating test of the duty: *The Queen v. J. C. Ayer Co.* (1887) 1 Ex. C. R. 232.

Fair market value in country of exportation—Trade discounts: *Schulze v. The Queen* (1899), 6 Ex. C. R. 268.

Section 47. Medicinal preparation—Market value of ingredients: *The Queen v. J. C. Ayer Co.* (1887) 1 Ex. C. R. 232.

Section 52. As to right to seize for undervaluation at another port after goods entered on importer's declaration of value which is accepted by collector at proper port of entry: See *Reg. v. Jagger* (1847) 3 U. C. Q. B. 255; *Wile v. Cayley* (1857) 14 U. C. Q. B. 285.

Section 70. Importation of parts of manufactured article: See *Grinnell v. The King* (1888) 16 S. C. R. 119.

#### IMPORTATION, EXPORTATION, ETC.

Section 116 (a). "Port at which they ought to be reported," means the port at which the goods are to be landed, i.e., where the effective report is to be made: *Canada Sugar Refining Co. v. The Queen* (1898) A. C. 735; 27 S. C. R. 395; 5 Ex. C. R. 177.

Section 117. The Exchequer Court of Canada has jurisdiction under R. S. C. c. 140, s. 31 (a), to entertain an action for duties constituting a "debt" under this section. Secus as to "penalties" under s. 206 *infra*: See *The Queen v. Fitzgibbon & Co.* (1900) 6 Ex. C. R. 383; *The King v. Lovejoy* (1905) 9 Ex. C. R. 377.

Lien of Crown for unpaid duty: *Clarkson v. Attorney-General for Canada*: (1888) 15 Ont. R. 632; 16 Ont. A. R. 202.

Section 133. Warehouseman's export bond—Enforcement of:  
See *The Queen v. Finlayson* (1897) 6 Ex. C. R. 202.

#### BONDS, SECURITIES, ETC.

Section 139. Section 8 of 8 & 9 Wm. III., c. 11, does not apply to proceedings by Crown for penalty for breach of a Customs export bond. Two bonds were entered into by warehousemen at the port of Montreal. Upon an information for breach of conditions, Held, that case must be determined by law of Province of Quebec, and that under Arts. C. C. L. C. 1036 and 1135, judgment should go for full amount of each bond: *The Queen v. Finlayson* (1897) 6 Ex. C. R. 202.

#### POWERS AND DUTIES OF OFFICERS.

Section 146. As to verbal appointment of officer by Chief Superintendent of Customs: see *Bouchard v. The King* (1904) 9 Ex. C. R. 216.

A customs collector, having permitted his deputy to perform the duties entrusted to the collector, was held responsible under his bond for defalcations of his deputy: *The Queen v. Stanton* (1852) 2 U. C. C. P. 18.

As to sale of goods, for non-entry, by collector: See *Simpson v. Yuile* (1877) 1 L. N. 31; *Ansell v. Simpson* (1877), 1 L. N. 64.

And see the Consolidated Revenue and Audit Act (R. S. C. 1906 c. 24) secs. 19, 20, 21, 22, 37, 38, 84, 85, 86, 87, 89, 90 and 95.

#### PROTECTION OF OFFICERS.

Section 160. A person who, acting as a revenue officer, or conceiving that he has authority so to act, seizes goods, is entitled to notice, without the necessity of proving his commission or appointment: *Wadsworth v. Murphy* (1844) 1 U. C. Q. B. 190.

No action will lie while the legality of the seizure is still undetermined: *Wile v. Cayley* (1857) 14 U. C. Q. B. 285.

Damages cannot be recovered against the Crown for the wrongful act of a customs officer in seizing a vessel for a supposed infraction of the customs law: *Julien v. The Queen* (1896) 5 Ex. C. R. 238.

Seizing officer not liable who acts on information duly obtained: *Saunders v. Barry* (1864) 14 L. C. R. 370.

Revendication of goods seized by collector: *Ryan v. Sanche* (1887) M. L. R. 4 Q. B. 312.

Doubtful whether an auctioneer who has sold goods seized under Customs Act and Inland Revenue Act can avail himself of clauses for protection of officers: *McDonald v. Clarke* (1887) 20 N. S. R. 254.

#### DEPARTMENTAL PROCEEDINGS UPON SEIZURES.

Sections 174, 175, 176, 177, 178, and 179. Even where departmental proceedings have been commenced, the Crown is not divested of its right to sue for penalties and forfeitures in a competent court: *The Queen v. MacDonell* (1883) 1 Ex. C. R. 99.

Section 180. A "reference" by the Minister is not in the nature of an appeal from his decision. The court may hear and determine upon evidence before it, whether the same was or was not before the Minister: *Tyrell v. The Queen* (1898) 6 Ex. C. R. 169.

A petition of right will lie for the restitution of a vessel, the seizure of which has been confirmed by the Minister, and no reference to the court has been made under s. 179: *Julien v. The Queen* (1896) 5 Ex. C. R. 238.

#### PENALTIES AND FORFEITURES.

Section 186. Entering place other than port of entry: see *The Queen v. McDonell* (1883) 1 Ex. C. R. 99.

Section 188. False statements regarding port of destination and character of cargo, which would subject master of vessel to a penalty under this section, will not support an information claiming forfeiture of the cargo for his not having made a report in writing of his arrival under s. 16: see *The King v. McDonell* (1883) 1 Ex. C. R. 99.

Section 206 (Smuggling). Bringing cattle to a point within two or three miles of the boundary line, whence they may "drift" or stray into Canada, is an element in the offence of smuggling . . . The offence is complete in such a case if the owner exercise any act of ownership over them in Canada, such as putting Canadian brands upon them: *Spencer v. The King* (1906) 10 Ex. C. R. 79. And see cases under ss. 40-43, 47, 52, 116, 117.

Where an entry is false as to some of the packages imported, the whole are forfeited: *Reg. v. Six Barrels of Hams* (1856) 3 Allen (N.B.) 387.

Section 222 (Ex-warehousing). See note to s. 133, *supra*.

#### PROCEDURE FOR PENALTIES AND FORFEITURES.

Section 265. The penalty enforceable in the Exchequer Court of Canada under s. 206 is a pecuniary one only, and the other remedies open to the Crown thereunder cannot be prosecuted in this court. . . . The court has no discretion as to the amount of the penalty, which is fixed by the statute; but under the Audit Act the governor in council may remit the penalty or forfeiture in whole or in part before or after the judgment: *The Queen v. Fitzgibbon & Co.*; *The Queen v. Thouret* (1900) 6 Ex. C. R. 383.

The penalty mentioned in s. 206 as recoverable before "two justices of the peace" cannot be sued for in the Exchequer Court of Canada: *The King v. Lovejoy* (1905) 9 Ex. C. R. 377.

It is not necessary in an information for smuggling to charge the defendant with all the offences mentioned in s. 206; it is sufficient to set up any one of them: *The King v. Lovejoy* (1905) 9 Ex. C. R. 377.

Where it is sought to recover, in addition to the value of the goods smuggled, a sum equal to the value of the goods, it is necessary to allege that the goods were "not found:" *Ibid*.

And see *O'Grady v. Wiseman* (1900) 3 C. Cr. Cas. 332.

See also note to s. 180 *supra*.

Sections 279, 280 (Limitation). Where the goods have been seized by a customs officer, such seizure is to be deemed a commencement of the proceeding: *The King v. Lovejoy* (1905) 9 Ex. C. R. 377.

As to limitation of actions for "additional penalties" under s. 206: See *Vacuum Oil Co. v. The Queen* (1890) 2 Ex. C. R. 234.

#### REGULATIONS.

Section 286 (1). Drawback on ships built in Canada: See *Matton v. The Queen* (1896) 5 Ex. C. R. 401.

And see notes to Copyright Act (R. S. C. c. 70), s. 4, *post*.

# ANNOTATIONS.

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## CHAPTER 49.

### Customs Tariff.

#### GOODS SUBJECT TO DUTIES.

Section 4. Crown is not liable, under Arts. 1047 and 1049 C. C. L. C., to pay interest on the amount of duties illegally exacted under a mistaken construction placed by customs officers upon the Customs Tariff Act: *Ross v. The King* (1902) 32 S. C. R. 532.

And see *Algoma Central Ry. Co. v. The King* (1901) 7 Ex. C. R. 239, 32 S. C. R. 277; [1903] A. C. 478.

Section 4 of the Tariff Act, 1895, provided that "this Act shall be held to have come into force on the 3rd May in the present year, 1895." It was not assented to until July. Held, that goods imported into Canada on 4th May, 1895, were subject to duty under the said Act: *The Queen v. Canada Sugar Refining Co.* (1897) 27 S. C. R. 395; [1898] A. C. 735.

In construing a clause of a Tariff Act which governs the imposition of a duty upon an article which has acquired a special and technical signification in a certain trade, reference must be had to the language, understanding and usage of such trade: *Dominion Bag Co. v. The Queen* (1894) 4 Ex. C. R. 311.

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## SCHEDULE A.

#### GOODS SUBJECT TO DUTIES.

Item 238. Rails for temporary track—Distinction between these and rails for permanent railway: *Sinclair v. The Queen* (1894) 4 Ex. C. R. 275.

And see *Toronto Railway Co. v. The Queen* (1896) A. C. 551.

Item 276. Manufactures of brass, etc.: see *Grinnell v. The Queen* (1888) 16 S. C. R. 119.

## SCHEDULE B.

## FREE GOODS.

Item 545. Where item 673 of R. S. C. c. 33 was susceptible of several interpretations, one of which was that jute cloth taken from the loom and cropped might be entered free of duty, and in this construction the importers and the officers of customs had concurred during such period of importation:—Held, that as the importers had acted in good faith in entering the goods free of duty, and that as such goods had then been sold, and any duty imposed would have to be paid by the importers, the doubt as to construction should be resolved in their favour: *Dominion Bag Co. v. The Queen* (1894) 4 Ex. C. R. 311.

Item 608. (Tea and Coffee). See s. 50, R. S. C. c. 1906, c. 48; and *Carter, Macy & Co. v. The Queen* (1890) 2 Ex. C. R. 126; 18 S. C. R. 706.

Item 611. See the ruling as to "sawn oak lumber," under item 726, schedule C of Tariff Act of 1886, in *Magann v. The Queen* (1889), 2 Ex. C. R. 64.



# ANNOTATIONS.

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## CHAPTER 51.

### Inland Revenue.

#### INTERPRETATION.

Section 2 (g). Revenue stamps are not articles of merchandise, and have no commercial value: *The King v. British American Bank Note Co.* (1901), 7 Ex. C. R. 119.

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#### PART I.

##### DEPARTMENT OF INLAND REVENUE.

Section 13 (b). Stamps: See note to s. 2 (g).

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#### PART II.

##### LICENSES.

Section 17. As to right of provinces to exact a brewer's license to sell wholesale: see *Brewers and Maltsters' Association v. Attorney-General for Ontario* (1897), A. C. 231; *Severn v. The Queen* (1878), 2 S. C. R. 70, which decided that the power to tax, by way of license fee, a brewer, was not within the competence of the Ontario legislature, may now be considered overruled.

##### POWERS OF OFFICERS.

Section 90. ("Any building or place.") See *Duquenne v. Brabant*, Q. R. 25 S. C. 451.

##### WRITS OF ASSISTANCE.

Section 92. A writ of assistance authorizes search in a private residence: *Duquenne v. Brabant*, Q. R. 25 S. C. 451.

## PROTECTION OF OFFICERS.

**Section 94.** Money received by officer — Action for — Notice of action—*Ultra vires*: *Wright v. Curless* (1888), 21 N. S. R. 232.

Action by informant for fine for illicit still—Notice of action: *Carroll v. Curless* (1890), 23 N. S. R. 32.

Auctioneer selling goods seized — *Quære*, whether entitled to notice of action: *McDonald v. Clarke* (1887), 20 N. S. R. 254.

**Section 97.** Seizure of goods—Probable cause: *Winning v. Gow* (1872), 32 U. C. Q. B. 528.

And see the Consolidated Revenue and Audit Act (R. S. C., 1906, c. 24), secs. 19, 20, 21, 22, 37, 38, 84, 86, 87, 90 and 95.

## PENALTIES AND FORFEITURES.

**Section 100, sub-sec. 2.** Forfeiture of vehicles for removing article subject to excise: see *McDonald v. Clarke* (1889), 22 N. S. R. 110.

**Section 118.** Goods not exported in terms of customs bond: see *The Queen v. Finlayson* (1897), 6 Ex. C. R. 202.

## RECOVERY OF DUTIES AND PENALTIES.

**Section 132 (a).** As to jurisdiction of old Vice-Admiralty Courts over penalties and forfeitures, see *Attorney-General v. Flint* (1884), 16 S. C. R. 707. Such jurisdiction is now exercisable by the Exchequer Court on its Admiralty side as well as on its common law side: See the terms of this section and *The Queen v. Allen* (1895), 5 Ex. C. R. 144.

**Section 132 (b).** Jurisdiction of Stipendiary magistrate—Limitation of amount: see *The King v. Brennan* (1902), 35 N. S. R. 106; *The King v. Kennedy* (1902), 35 N. S. R. 266.

**Section 132, sub-sec. 2** (Warrant of commitment—Costs). Where a conviction is made and a money penalty imposed and in default imprisonment for a fixed term unless the penalty and the costs and charges of conveying the accused to gaol are sooner paid, it is necessary that the amount of the latter costs and charges should be stated in the warrant of commitment, and where not so stated

the prisoner may be discharged on habeas corpus: *The Queen v. Corbett* (1899), 2 C. Cr. C. 499.

Section 135. (Limitation of prosecutions.) Limitation does not prevent proceedings at the instance of the Attorney-General being instituted affecting a longer period before the institution of such proceedings, on the discovery of frauds in the making of returns: *Attorney-General v. Walker* (1877), 25 Gr. 233; 3 Ont. A. R. 195.

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### PART III.

#### DISTILLERIES.

##### DUTIES OF EXCISE.

Section 155. (Duty upon spirits).—"Old Tom Gin" held to be spirits, and permit required under s. 177: *Winning v. Gow* (1872), 32 U. C. Q. B. 528.

Defendant was held liable to pay duty on all spirits manufactured by him, not merely on such as had been measured and ascertained in the manner pointed out in the statute; for the main object of the statute was to obtain duty on all spirits manufactured, and the provisions for ascertaining the quantity, etc., are only auxiliary thereto: *Attorney-General v. Halliday* (1867), 26 U. C. Q. B. 397.

##### RETURNS.

Section 170. Returns by distillers — Fraud — Limitation of proceedings for: *Attorney-General v. Walker* (1887), 25 Gr. 233; 3 Ont. A. R. 195.

##### PENALTIES AND FORFEITURES.

Section 180. Unlicensed still—Locality of still: See *The King v. Brennan* (1902), 35 N. S. R. 106; *The King v. Kennedy* (1902), 35 N. S. R. 266.

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### PART V.

#### BREWERIES.

Section 198 (Licenses). See note to s. 17, *supra*.

# ANNOTATIONS.

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## CHAPTER 52.

### Weights and Measures Act.

Section 73. Crime—Evidence of defendant—Imprisonment: Reg.  
v. Dunning, 14 O. R. 52. But see Canada Evidence  
Act, R. S. c. 145, s. 4.

# ANNOTATIONS.

## CHAPTER 55.

### Dominion Lands.

Section 79. Road allowance—Boundary lines—Survey—Re-survey—Ratification: *Pockett v. Poole* (1897), 11 Man. R. 510.

Section 109. Homestead entry.—Cancellation where issued through error and improvidence: *The Queen v. Becher* (1895), 4 Ex. C. R. 412.

A petition of right will not lie to compel the Crown to grant a patent of lands: *Clarke v. The Queen* (1886), 1 Ex. C. R. 182.

Section 123. Ejectment—Homestead entry—Attacking patents—*Locus standi*: *Farmer v. Livingstone* (1880), 5 S. C. R. 221; (1882) 8 S. C. R. 140. Homestead exempt from execution. See *Massey v. McClelland*, 2 Terr. L. Rep. 179.

Section 142. (Assignment before issue of patent). See *Spence v. Arnold* (1901), 5 Terr. L. Rep. 176.

Section 159. Mining regulations—Placer mining—Staking claims—Overlapping sections—Renewal grants—Unoccupied Crown lands: *St. Laurent v. Mercier* (1903), 33 S. C. R. 314.

The Dominion Lands Act, 1886, and Regulations of 1889 thereunder, reserving mines and minerals out of ordinary grants for settlement, etc., held not to apply to a grant of Dominion lands as a subsidy to a railway company under 53 Vict. c. 4, and order in council made thereunder: *Calgary and Edmonton Ry. Co. v. The King* (1904), A. C. 765.

Section 17 of the Mining Regulations, passed under the Dominion Lands Act (R. S. C. (1886) c. 54), does not give the holder of a grant for placer mining the same privileges as to a renewal of his grant which are accorded to the holder of a quartz mining grant. The placer miner on renewal (to which he has no absolute, but only a preferential right), holds under an annual grant in substitution for, but not in continuation of, his

original grant. And the renewed grant is subject to all such regulations as may be in force at the date when it comes into operation, whether or not it was made during the currency of an existing grant. The Governor in Council has power to make regulations requiring the placer miner to pay a percentage on the proceeds realized from the grant. Such an imposition called a royalty, is not a tax, but is a reservation which the owner in fee is entitled to make out of his grant: *Chappelle v. The King* (1904), A. C. 127.

Cases where grant of Dominion lands passes mines and minerals without express words: *Canadian Coal and Colonization Co. v. The Queen* (1892), 3 Ex. C. R. 157; affirmed 24 S. C. R. 713.

Section 171. License to cut timber—Disputed territory between Province and Dominion—Breach of contract to issue license: *St. Catharines Milling and Lumber Co. v. The Queen* (1890), 2 Ex. C. R. 202.

Permit to cut timber—License—Essentials of: See *Sinnott v. Scoble* (1884), 11 S. C. R. at p. 581.

Section 185. Cutting timber without authority—Claim for—Demurrer: *The Queen v. Whitehead* (1884), 1 Ex. C. R. 134; *Genelle v. The King* (1907), 10 Ex. C. R.

And see Annotations to Land Titles Act (R. S. C. 1906, c. 110).

# ANNOTATIONS.

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## CHAPTER 58.

### Ordnance and Admiralty Lands Act.

Section 2. Niagara River bank not ordnance lands: Commissioners Niagara Falls Bank v. Howard, 23 A. R. (Ont.) 355.

Proceeds of lands sold before 19 Victoria belongs to Province: H. M. Secretary of State for War v. G. W. R., 13 Gr. 503.

Sections 5 and 6. The Minister of Interior cannot lease ordnance lands without consent of Governor in Council: The Quebec Skating Club v. The Queen, 3 Ex. C. R. 387.

Lessee not entitled to obstruct road through ordnance lands: Regina v. Davis, Regina v. Fraleck, 11 U. C. R. 340.

Improvident grant of ordnance lands: Doe d. Mallock v. Principal Officers of Ordinance, 3 U. C. R. 387.

Cancellation of sale—Powers of Deputy Minister: Murphy v. The Queen, 3 Ex. C. R. 75.

Trusts affecting ordnance lands: Kennedy v. Toronto, 12 O. R. 211.

# ANNOTATIONS.

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## CHAPTER 59.

### Railway Belt Act.

Section 3. Pre-emption of lands prior to conveyance to Dominion Government: *The Queen v. Demers*, 3 Ex. C. R. 293, 22 Can. S. C. R. 482.

Free miner's certificate prior to conveyance to Dominion Government: *Esquimalt & Nanaimo Rly. Co. v. Bainbridge* (1896) A. C. 561.



# ANNOTATIONS.

## CHAPTER 63.

### Yukon Territory.

Section 12. The Executive Government of the Yukon Territory may lawfully authorize the construction of a toll tramway or waggon road over Dominion lands in the territory, and private persons using such road cannot refuse to pay the tolls exacted under such authority: *O'Brien v. Allen* (1900), 30 S. C. R. 340.

Section 16. (Jurisdiction)—Governor in Council is not competent to take away right of appeal to Supreme Court of Canada from Territorial Court: *Hartley v. Matson* (1902), 32 S. C. R. 575.

Section 16, sub-sec. 2 (a). Royalties on gold: See *The King v. Chappelle* (1902) 32 S. C. R. 586. See also cases in note to s. 159 of Dominion Lands Act, c. 55, ante; and the provisions of ss. 85 and 86 of c. 64, post.

Section 19. (English law in force.) The provisions of the Imperial Act, 2 & 3 Vict. c. 11, as to registration of *lis pendens* and for the protection of *bonâ fide* purchasers *pendente lite*, are not in force in the Yukon Territory: *Syndicat Lyonnais du Klondyke v. McGrade* (1905), 36 S. C. R. 251.

Section 36. Territorial Court—Appeal from to Supreme Court of Canada not to be taken away by Ordinance of Governor in council: *Hartley v. Matson* (1902), 32 S. C. R. 575; *Courtney v. Canadian Development Co.* (1900), 7 B. C. R. 377.

And see *Kleinschmidt v. Plaschaert* (1898) 2 N. W. T. Rep. 329; *Canadian and Yukon Mining Co. v. Casey*, 7 B. C. R. 373.

See, generally, the Yukon Placer Mining Act, c. 64, as annotated, post.

Section 38. Judge as member of Territorial Council: See *The King v. Dugas* (1905), 10 Ex. C. R. 67.

# ANNOTATIONS.

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## CHAPTER 64.

### Yukon Placer Mining.

Reference in general is directed to the notes to the Dominion Lands Act (R. S. C., 1906, c. 55); and to the Lands Titles Act (R. S. C., 1906, c. 110).

#### MINING OFFICIALS.

Sections 3 and 5 (Powers of Gold Commissioners). Verbal regulation by commissioner: *Victor v. Butler* (1901), 8 B. C. R. 100. And see *Spruce Creek Power Co. v. Muirhead* (1904), 11 B. C. R. 68; *Tanghe v. Morgan* (1904), 11 B. C. R. 76; *Brown v. Spruce Creek Power Co.* (1905), 11 B. C. R. 243.

#### LOCATING AND RECORDING CLAIMS.

Sections 28-35 (Staking—Mistake). See *Dockstader v. Clark* (1904), 11 B. C. R. 37, S. C., 36 S. C. R. 622; *Tanghe v. Morgan* (1904), 11 B. C. R. 76; *Victor v. Butler* (1901), 8 B. C. R. 100.

#### WATER RIGHTS.

Section 53 (Rights of claim owner). See *Brown v. Spruce Creek Power Co.* (1905), 11 B. C. R. 243; *Klondyke Government Concession v. McDonald* (1906), 38 S. C. R. 79.

# ANNOTATIONS.

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## CHAPTER 66.

### Postal Service.

**Section 2 (1).** (Post office as a public work within meaning of s. 20 (c), of Exchequer Court Act). Crown is under no legal obligation to any one who goes to a post office building to post or get his letters to repair or keep in a reasonably safe condition the walks and steps leading to such building. 2. A person so going there goes of his own choice and on his own business, and the duty of the Crown as owner of the building, if such a duty were assumed to exist, would be to warn or otherwise secure him from any danger in the nature of a trap known to the owner and not open to ordinary observation. 3. A petition of right will not lie against the Crown for injuries sustained by one who falls upon a step of a public building by reason of ice which had formed there and which the Minister of Public Works had failed to remove or to cover with sand or ashes: *Leprohon v. The Queen* (1894), 4 Ex. C. R. 100.

**Section 9 (c).** (Contract for carrying mails). An action will not lie against the Crown for breach of a contract for carrying mails by steamboat for nine months at the rate of \$10,000 a year, made by parol with the Postmaster-General and accepted by the contractor by letter, and partly performed: *Humphrey v. The Queen* (1892), 20 S. C. R. 591, affirming 2 Ex. C. R. 386. See s. 110 *infra*.

**Section 9 (v).** Negligence in sending letter—Liability: *Carey v. Lawless* (1856), 13 U. C. Q. B. 285.

**Section 16.** Post office inspector—Appointment—Discharge of official duty—Privileged communication—Slander: *Dewe v. Waterbury* (1881), 6 S. C. R. 143.

A post office inspector is not entitled to notice of an action to recover damages for defamatory statements made by him: *Hanes v. Burnham* (1896), 23 Ont. A. R. 90.

Section 66. (Letters carried by friends). Where a person on a journey undertakes, as a private friend, to carry a letter to another, he is a gratuitous bailee and bound only to take as much care of the letter as he would of his own: *Tindall v. Hayward* (1861), 7 U. C. L. J. 243.

Section 83. Loss of letter: See *Holman v. Weller* (1851), 8 U. C. Q. B. 202.

Section 92. (Liability of postmaster—Negligence in forwarding letter). An action will lie against a postmaster for not sending a letter: *Carey v. Lawless* (1856), 13 U. C. Q. B. 285.

(Postmaster). A postmaster is responsible for a registered letter lost through his neglect, or that of an assistant, in leaving it in an exposed place contrary to regulations of the Post Office Department: *Delaporte v. Madden* (1872), 17 L. C. J. 29.

Section 93. (Postmaster's bond). In an action by the Crown on the information of the Attorney-General of Canada upon a bond executed in the Province of Quebec in the form prescribed by federal legislation, Held, that the right of action under the bond was governed by the law of Quebec; and that the bond was not an obligation with a penal clause within Arts. 1131 and 1135 C. C. L. C.: *Black v. The Queen* (1899), 29 S. C. R. 693.

The statute 33 Hen. VIII, c. 39, s. 79, respecting suits upon bonds, is not in force in the Province of Quebec: s. c. in *Exchequer Court* (1889), 6 Ex. C. R. 236. See also *Reg. v. McPherson* (1864), 15 U. C. C. P. 17; *Postmaster-General v. McColl* (1880), 31 U. C. C. P. 364.

Crown's remedy by extent upon bond: *Reg. v. McNabb*, 30 U. C. Q. B. 479.

Section 99. (Postmaster's salary).—Claim for difference between amount authorized and that paid—Interest—Civil Service Act, R. S. C. (1886), c. 17, s. 6 and sched. B.—51 Vict., c. 12, s. 12—Extra allowance: *Hargrave v. The Queen* (1902), 8 Ex. C. R. 62.

Section 110. (Carriage by steamboat). An action will not lie against the Crown for breach of a contract for carrying mails by steamboat for nine months at the rate of \$10,000 a year, made by parol with the Postmaster-General and accepted by the contractor by letter, notwithstanding it was partly performed, as, if a perman-

ent contract, being for a larger sum than \$1,000 it could not be made without authority of an order in council, and if temporary it was revocable at the will of the Postmaster-General: *Humphrey v. The Queen* (1892), 20 S. C. R. 591.

**Section 133.** (Public moneys converted). Indictment should charge the defendant as obtaining money, etc., from the King—not from the postmaster: *The Queen v. Des-sauer*, 21 U. C. Q. B. 231.

**Section 137.** (Penalties). This provision does not take away the Crown's remedy by extent: *Reg. v. McNabb*, 30 U. C. Q. B. 479.

**Section 140.** (Suits by Postmaster-General). This provision does not take away Crown's remedy by *scire facias*: *Reg. v. McPherson*, 15 U. C. C. P. 17.

**Section 141.** (Security of officer—Suing on). Bond—Construction of: *Postmaster-General v. McColl*, 31 U. C. C. P. 364.

In Quebec right of action governed by provisions of Code: *Black v. The Queen*, 6 Ex. C. R. 236; 29 S. C. R. 693.

# ANNOTATIONS.

## CHAPTER 69.

### Patents of Invention.

#### INTERPRETATION.

Section 2 (c). Invention: See notes to s. 7 *infra*.

#### OFFICERS.

Section 5, sub-sec. 2. Framed after decision in *Power v. Griffin* (1902), 33 S. C. R. 39.

#### APPLICATION FOR PATENTS.

Section 7. (Invention.) Simplicity of invention no bar to patent: *Powell v. Begley* (1867), 13 Gr. 381; *Yates v. Great Western Ry. Co.* (1877), 24 Gr. 495; *Summers v. Abell* (1869), 15 Gr. 532. But see *Owens v. Taylor* (1881), 29 Gr. 210.

Saving of labour and expense without invention: *Waterous v. Bishop* (1869), 20 U. C. C. P. 29.

Lack of invention: *Kemp v. Chown* (1902), 7 Ex. C. R. 306; *Taylor v. Brandon Mfg. Co.* (1894), 21 Ont. A. R. 361.

Use of one known article for another not invention: *Wisner v. Coulthard* (1893), 22 S. C. R. 178; *Baril v. Masterman* (1881), 4 L. N. 181.

Process patent. Distinction between "process" and "device": *Hambly v. Albright & Wilson* (1902), 7 Ex. C. R. 363. See also *Toronto Auer Light Co. v. Colling* (1898), 31 Ont. R. 18; *Meldrum v. Wilson* (1901), 7 Ex. C. R. 198; *Auer Incandescent Light Mfg. Co. v. O'Brien* (1897), 5 Ex. C. R. 243.

(Prior user.) First inventor—Delay in patenting: *American Dunlop Tire Co. v. Goold Bicycle Co.* (1899), 6 Ex. C. R. 223; *Patric v. Sylvester* (1876), 23 Gr. 573.

Prior patent to one not first inventor: *Smith v. Goldie* (1882), 9 S. C. R. 46. And see *Vanorman v. Leonard* (1844), 2 U. C. Q. B. 72; *The Queen v. Laforce* (1894), 4 Ex. C. R. 14.

Similar invention—Independent inventor: *Barter v. Howland* (1878), 26 Gr. 135; *The Queen v. Laforce* (1894), 4 Ex. C. R. 14.

User before Canadian patent—Wrongdoer—Injunction: *Lean v. Huston* (1885), 8 Ont. R. 521; *Fowell v. Chown* (1894), 25 Ont. R. 71; *Victor Sporting Goods Co. v. Wilson* (1904), 7 Ont. L. R. 570.

Inventor's user before patent granted—Experimental user: *Summers v. Abell* (1869), 15 Gr. 532; *Bonathan v. Bowmanville Furniture Mfg. Co.* (1871), 31 U. C. Q. B. 413; *Conway v. Ottawa Electric Ry. Co.* (1904), 8 Ex. C. R. 432.

Patent invalidated by prior sale of machine: *Hessin v. Coppin* (1873), 19 Gr. 629. And see *Bernier v. Beauchemin* (1859), 5 L. C. J. 29; *Woodruff v. Moseley* (1875), 19 L. C. J. 169.

(Novelty and Anticipation) — Patentable device — Carriage tops—Combination—Anticipation: *Dansereau v. Bellemare* (1888), 16 S. C. R. 180.

Prisms for deflecting light—Anticipation: *Luxfer Prism Co. v. Webster* (1902), 8 Ex. C. R. 59.

Railroad tie-plates—Novelty: *Servis Railroad Tie-Plate Co. v. Hamilton Steel and Iron Co.* (1904), 8 Ex. C. R. 381.

Black-leaf check-book—Novelty: *Grip Printing & Publishing Co. v. Butterfield* (1885), 11 S. C. R. 291; and see *Carter & Co. v. Hamilton* (1894), 23 S. C. R. 172.

Aggregation of parts not in themselves patentable, and producing no new result due to the combination itself, not patentable: *Hunter v. Carrick* (1885), 11 S. C. R. 300.

Mechanical equivalent—Substituted material: *Ball v. Crompton Corset Co.* (1886), 13 S. C. R. 469.

Combination — Colourable imitation — Subsequent patent—Setting aside: *Collette v. Lasnier* (1886), 13 S. C. R. 563; *Patric v. Sylvester* (1876), 23 Gr. 573; *Woodward v. Clement* (1886), 10 Ont. R. 348.

New application lying so much out of track of former use as not naturally to suggest itself to a person turning his mind to the subject, but requiring thought and study: *Bicknell v. Peterson* (1897), 24 Ont. R. 427.

Process for soldering meat preserving cans: *Federation Brand Salmon Canning Company v. Short* (1900), 31 S. C. R. 378; 7 B. C. R. 197.

Section 8, sub-sec. 3. Expiry of foreign patent not to affect life of Canadian patent. (This provision enacted after decision in *Dominion Cotton Mills v. General Engineering Co.* (1902), A. C. 570.) But it should be noted that in *Auer Light Co. v. Dreschel* (1898), 6 Ex. C. R. 55, it

was held that the section now repealed referred only to foreign patents in existence when the Canadian patent was granted. Affirmed on appeal, see 28 S. C. R. 608.

**Section 9. Improvements—Patentability of improvement not involving any new principle or new combination:** *North v. Williams* (1870), 17 Gr. 179. And see *Bonathan v. Bowmanville Furniture Mfg. Co.* (1871), 31 U. C. Q. B. 413, and *Huntington v. Lutz* (1863), 13 U. C. C. P. 168.

Improvement involving all the difference between failure and success: *General Engineering Co. of Ontario v. Dominion Cotton Mills Co.* (1899), 6 Ex. C. R. 306. See the case on appeal to the Privy Council (1902), A. C. 570.

Right to patent where patentee employed to make improvement: *Bonathan v. Bowmanville Furniture Mfg. Co.* (1871), 31 U. C. Q. B. 413; *Conway v. Ottawa Street Ry* (1904), 8 Ex. C. R. 432.

Improvements in trueing-up car wheels—Invention—Utility: *Griffin v. Toronto Railway Co.* (1902), 7 Ex. C. R. 411.

Improvement on old device—Narrow construction: *Sharples v. National Mfg. Co.* (1905), 9 Ex. C. R. 460.

Combination—Trifling change: *Mitchell v. Hancock Inspirator Co.* (1886), 2 Ex. C. R. 539.

And see cases under secs. 29-37 *infra*.

**Section 13. (Specification.)** May be explained by drawings: *The Queen v. Laforce* (1894), 4 Ex. C. R. 14.

What constitutes sufficient specification: *Smith v. Ball* (1861), 21 U. C. Q. B. 122; *Waterous v. Bishop* (1869), 20 U. C. C. P. 29; *Taylor v. Brandon Mfg. Co.*, 21 Ont. A. R. 361; *Emery v. Iredale*, 11 U. C. C. P. 106; *Patric v. Sylvester*, 23 Gr. 573; *Smith v. Mutchmore*, 11 U. C. C. P. 458.

#### REFUSAL TO GRANT PATENTS.

**Section 17. Jurisdiction of Commissioner—Judicial tribunal—Prohibition:** *In re Bell Telephone Company* (1885), 7 Ont. R. 605. See also *Toronto Telephone Mfg. Co. v. Bell Telephone Co.* (1885), 2 Ex. C. R. 524; *Smith v. Goldie* (1883), 9 S. C. R. 46.

#### CONFLICTING APPLICATIONS.

**Section 20. Arbitration—Refusal of one applicant to unite with other applicants in appointing arbitrators—Appointment by Commissioner in such case:** *Faller v. Aylen* (1904), 8 Ont. L. R. 70.



## GRANT AND DURATION OF PATENTS.

**Section 21.** Grant of patent in England has no force in Canada: *Adams v. Peel* (1850), 1 L. C. R. 130. But cf. Copyright Act, sec. 4, *infra*.

English patent is a "foreign" patent: *Dominion Cotton Mills v. General Engineering Co.* (1902), A. C. 570.

Grant of patent is a contract between State and discoverer, which should be liberally construed in favour of the latter: *Barter v. Smith* (1877), 2 Ex. C. R. 455. It is submitted that this proposition is erroneous in view of Lord Eldon's opinion cited in *Harmer v. Plane* (1807), 14 Ves. 131. See also *Tubes Ltd. v. Perfecta, etc., Ltd.* (1902), 20 Cutl. R. P. C. 95. Again, a patent is not a contract, it is a royal grant. See *Feather v. The Queen* (1865), 6 B. & S. 257. In construing a patent the Court will not lean to one side or the other. *Barter v. Smith*, as an authority, has been considerably shaken of late. See *Power v. Griffin* (1902), 33 S. C. R. 39; *Hildreth v. McCormick Mfg. Co.* (1906), 10 Ex. C. R.

**Section 24.** Re-issue—Additional claim—Omission from original patent—Error—Laches: *Withrow v. Malcolm* (1884), 6 Ont. R. 12.

Mistake in original patent—Delay in re-issue: *Kidder v. Smart* (1885), 8 Ont. R. 362.

Change in claim—Identity of invention—Defect in patent: *Auer Incandescent Light Co. v. O'Brien* (1897), 5 Ex. C. R. 243. See also *Hunter v. Carrick* (1885), 11 S. C. R. 300.

## ASSIGNMENTS.

**Section 26.** Assignment—Failure of Consideration—Manufacture: *Vermilyea v. Canniff* (1886), 12 Ont. R. 164.

Condition as to user: *Mergenthaler Linotype Co. v. Toronto Type Foundry Co.*, Q. R. 14 K. B. 458.

Assignment for limited period—Sale thereafter: *Bennett v. Wortman* (1901), 2 Ont. L. R. 292.

Enforcing payment of royalties under agreement where patent void: *Owens v. Taylor* (1881), 29 Gr. 210; *Beam v. Merner* (1887), 14 Ont. R. 412.

Right of licensee to terminate: *Noxon v. Noxon*, 24 Ont. R. 401.

Rights of assignee against subsequent patent granted to assignor: *Watson v. Harris* (1899), 31 Ont. R. 134; *Bingham v. McMurray* (1899), 30 S. C. R. 159.

Subsequent assignments of same patent—Rights of assignees: *Fire Extinguisher Co. v. North Western (Babcock) Fire Extinguisher Co.* (1873), 20 Gr. 625; *Gillies v. Colton* (1875), 22 Gr. 123; *Dalglish v. Conboy* (1876), 26 U. C. C. P. 254; *Stovin v. Dean* (1867), 26 U. C. Q. B. 600.

Right of licensee to make alterations and improvements: *McLaughlin v. Lake Erie & Detroit Ry. Co.* (1902), 3 Ont. L. R. 706.

Licensee disputing validity of patent during existence of license: *Whiting v. Tuttle* (1870), 17 Gr. 454.

Action of infringement by assignee against assignor—Assignor attacking patent—Estoppel: *Indiana Mfg. Co. v. Smith* (1904), 9 Ex. C. R. 154.

#### IMPEACHMENT AND OTHER LEGAL PROCEEDINGS.

Sections 29-37. Infringement—Defence not raised in pleadings—Judgment on—Amendment: *Servis Railroad Tie-Plate Co. v. Hamilton Steel & Iron Co.* (1904), 8 Ex. C. R. 381.

Infringement—Particulars—Order for—Disregard of—Excision of pleading—Evidence: *Noxon Bros. Mfg. Co. v. Patterson & Brother Co.* (1894), 16 Ont. P. R. 40. And see *Smith v. Greey* (1885), 11 Ont. P. R. 169; *Mills v. Scott* (1849), 5 U. C. Q. B. 360.

Infringement—Production of documents—Privilege: *Toronto Gravel Road Co. v. Taylor* (1875), 6 Ont. P. R. 227.

Infringement—General denial—Evidence of want of novelty: *Patric v. Sylvester* (1876), 23 Gr. 573; *Emery v. Iredale*, *Emery v. Hodge* (1860), 11 U. C. C. P. 106. See also *Barter v. Howland* (1878), 26 Gr. 135.

Infringement—Parties—Assignee of patentee—Amendment: *Yates v. Great Western Ry. Co.* (1877), 24 Gr. 495.

Infringement—Assignor and assignee—Estoppel: *Indiana Mfg. Co. v. Smith* (1904), 9 Ex. C. R. 154.

Infringement—Costs in infringement cases: *Patric v. Sylvester* (1876), 23 Gr. 573; *Huntingdon v. Lutz* (1864), 10 U. C. L. J. 46; *Hunter v. Carrick* (1881), 28 Gr. 489.

Impeachment—Scire facias to repeal patent: *The Queen v. Laforce* (1894), 4 Ex. C. R. 14; *The Queen v. General Engineering Co.* (1900), 6 Ex. C. R. 328. See also *The Queen v. Pattee*, 5 Ont. P. R. 292.

Discovery—Examination of defendant—Details of business transactions: *Dickerson v. Radcliffe* (1897) 17 Ont. P. R. 586.

Disclosing witnesses: *Smith v. Greey* (1884), 10 Ont. P. R. 482.

Judgment by default in proceedings to avoid patent—Certifying judgment to Commissioner: *Peterson v. Crown Cork & Seal Co.* (1897), 5 Ex. C. R. 400.

Sequestration to enforce compliance with judgment—Refusal to order—Grounds: *Sharples v. National Mfg. Co.* (1905), 9 Ex. C. R. 460.

Demurrer—Appeal to Supreme Court from Exchequer Court—Leave to appeal under ss. 51 and 52 of Exchequer Court Act, as amended by 2 Edw. VII., c. 8, will not be granted where order not a decision upon the issues raised: *Toronto Type Foundry Co. v. Mergenthaler Linotype Co.* (1905), 36 S. C. R. 593.

Infringement. Production of documents—Privilege: *Guelph C. Company v. Whitehead* (1883), 9 Ont. P. R. 509. See also *Barter v. Howland* (1878), 26 Gr. 135; *Toronto Auer Light v. Colling* (1898), 31 Ont. R. 18.

Infringement—Want of novelty—Narrow construction—*Carter & Co. v. Hamilton* (1893), 3 Ex. C. R. 351; 23 S. C. R. 172.

Infringement. Interim injunction—Condition that claim for more than nominal damages be waived: *Bonathan v. Bowmanville Furniture Mfg. Co.* (1870), 5 Ont. P. R. 195. And see *Hessin v. Coppin* (1874), 21 Gr. 253.

Different Courts—Concurrent application for interim injunction: *Auer Incandescent Light Mfg. Co. v. Dreschel* (1897), 5 Ex. C. R. 384.

Infringement. Making injunction perpetual: *Huntingdon v. Lutz* (1863), 13 U. C. C. P. 168; *Gillies v. Colton* (1875), 22 Gr. 123.

Infringement. Substantial identity: *American Dunlop Tire Co. v. Anderson Tire Co.* (1896), 5 Ex. C. R. 194.

Infringement. Colourable imitation: *Collette v. Lasnier* (1885), 13 S. C. R. 563.

Infringement by inducing or procuring others to infringe: *Copeland-Chatterton Co. v. Hatton* (1906), 10 Ex. C. R. 224; affirmed 37 S. C. R. 651.

Infringement—Construction—Improvement patent—Narrow construction—Limited to device substantially in the form described: *Sharples v. National Mfg. Co.* (1905), 9 Ex. C. R. 460. See also *Chamberlain Metal Weather Strip Co. v. Peace Metal Weather Strip Co.* (1905), 9 Ex. C. R. 399; affirmed 37 S. C. R. 530.

#### CONDITIONS UPON WHICH PATENTS GRANTED.

Section 38. (Importation, non-manufacture and sale). Where article imported is ordinary commercial article, and

not specified in claim as part of patented invention, patent is not forfeited by importation of same: *Royal Electric Company v. Edison Electric Company* (1889) 2 Ex. C. R. 576.

Importation of parts as bearing upon forfeiture of patents: See above case, and *Mitchell v. Hancock Inspirator Co.* (1886), 2 Ex. C. R. 539; *Wright v. Bell Telephone Co.* (1887), 2 Ex. C. R. 552; *Anderson Tire Co. of Toronto v. American Dunlop Tire Co.* (1896), 5 Ex. C. R. 82; *Toronto Telephone Mfg. Co. v. Bell Telephone Co.* (1885), 2 Ex. C. R. 524; *Barter v. Smith* (1877), 2 Ex. C. R. 455.

("Process.") Where the invention is a process only the patentee satisfies the statute and the condition of his patent by being ready to allow the process to be used by anyone for a reasonable sum. In such a case importation by a licensee will not avoid the patent so far as the interest of the owner is concerned: *Hambly v. Albright & Wilson* (1902), 7 Ex. C. R. 363.

As to "manufacture": See above cases, and particularly *Power v. Griffin* (1902), 33 S. C. R. 39, overruling *Barter v. Smith* (supra) in part.

Personal manufacture by patentee not necessary: *Brook v. Broadhead* (1889), 2 Ex. C. R. 562.

Sale to person desiring to use patented invention. Requirements of valid sale: *Copeland-Chatterton Co. v. Hatton* (1906), 10 Ex. C. R. 224.

"Reasonable price" is a reasonable price in money: *Ibid.*, and see *Copeland-Chatterton Co. v. Pacquette* (1906), 10 Ex. C. R.

The provisions of this section as to manufacture, and the cases collated thereunder, have to be read in the light of sec. 44, which became law in 1903.

Offer to lease machine, but refusal to sell. See *Hildreth v. McCormick Mfg. Co.* (1906), 10 Ex. C. R.

Section 52. (User by the Crown.) Compensation must be fixed by the Commissioner before right of action accrues: *McDonald v. The King* (1906), 10 Ex. C. R.

Section 55. What constitutes a sufficient stamping: See *Smith v. Mitchmore* (1849), 10 U. C. C. P. 391.

Stating article is patented where no Canadian patent: *Kidder v. Smart* (1885), 8 Ont. R. 362.

#### OFFENCES AND PENALTIES.

Section 64. (Stamping article). See note to sec. 55 supra.

# ANNOTATIONS.

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## CHAPTER 70.

### Copyright.

#### SUBJECT AND CONDITIONS OF COPYRIGHT.

Section 4. (Constitutionality.) It was held by the Judicial Committee of the Privy Council in *Routledge v. Low* (L. R. 3 E. & I. App. 100) that the Imperial Copyright Act of 1842 extended the protection of British Copyright to every part of the British dominions, even to a colony having its own Copyright Act. (See especially the opinion of Lord Cranworth, at p. 113.) Lord Cranworth's opinion that it is within the power of the Imperial Parliament to enact legislation touching any subject in the domain of private law, which shall be binding upon a colony enjoying a previous grant of the power to legislate upon such subject is, of course, fortified by the provisions of s. 2 of the Colonial Laws Validity Act, 1865, and was apparently adopted by the Court in the leading Canadian case of *Smiles v. Belford* (See per Moss, J.A., in 1 Ont. A. R. at p. 447). It is to be borne in mind that the decision in this case has been repeatedly impugned by counsel in subsequent cases. However, it was followed in the recent case of *Black v. Imperial Book Co.* (1904) 8 Ont. L. R. 9; and on the appeal in the last mentioned case, the Supreme Court of Canada refused to say that *Smiles v. Belford* was rightly or wrongly decided. (See 35 S. C. R. 488, and compare the observations of Lord Atkinson in the *Alien Labour Case* ((1906) A. C. at p. 547), as to the plenary power of the Parliament of Canada to legislate upon any subject granted to it unreservedly by the B. N. A. Act, 1867.) The Dominion Copyright Act of 1872 was disallowed by the Imperial authorities because they deemed it to be in conflict with Imperial legislation. (See *Canada Sess. Papers* (1875) Vol. viii., No. 28.) After the Dominion and Imperial authorities had arrived at an understanding in the matter, the Canadian Copyright Act of 1875 was passed and ratified in the same year by the Imperial Statute 38 & 39 Vict. c. 53, and the

order in council made thereunder. This Act is embodied in c. 62 of the Revised Statutes of Canada, 1886. By s.-s. 4 of s. 8 of the International Copyright Act (Imp.) 1866, it is provided that "nothing in the Copyright Acts, or this Act, shall prevent the passing in a British possession of any Act or ordinance respecting the copyright within the limits of such possession of works first produced in such possession."

By an Order of Her Majesty in Council, passed in the year 1868, under the Imperial Foreign Reprints Act, 1847, the prohibition against importing foreign reprints of British copyright works was suspended so far as Canada was concerned. In 1889 the Dominion Parliament passed an Act to amend the Copyright Act of 1875, the provisions of which were designed to prevent authors belonging to the United States publishing their works in Great Britain, and thus securing copyright in Canada under the Imperial Act. It was also intended to prevent British authors from making arrangements with United States publishers whereby the latter secured the Canadian as well as the United States market. (See Canada Sessional Papers, 1894, No. 50; *ibid.*, 1895, No. 81.) The royal assent was withheld from this Act. In 1900, however, an Act, the provisions of which are embodied in ss. 28, 29, 30, and 31 of this chapter, was passed by the Canadian Parliament, and received the royal assent. It will be observed that this Act does not attempt to affect British copyright. If, however, a British author desires to have a Canadian copyright, he must arrange with a local publisher and have a special Canadian edition printed, although the type therefor need not be set in Canada. This being done, the Canadian edition will be protected, and neither the author nor anyone else will be permitted to import copies of the work into Canada.

The present Copyright Act protects foreign authors, wheresoever resident, where there is a first or contemporaneous publication within the Empire: *Life Publishing Co. v. Rose Publishing Co.* (1906), 12 Ont. L. R. 386.

As to priorities of British and Canadian copyrights, see *Anglo-Canadian Music Publishers' Association v. Suckling* 17 Ont. R. 239.

Section 52 of the Imperial Customs Act (39-40 Vict. c. 36), is not in force in Ontario, notwithstanding the statement to the contrary in the note to Table IV. of the Appendix to Vol. III. R. S. O. 1897. See *Black v. Imperial Book Co.* (1904), 8 Ont. L. R. 9; 35 S. C. R. 488.

The Imperial Act, 25 & 26 Vict. c. 68, relating to Copyright in works of Fine Art, is not in force in Canada: *Graves v. Gorrie*, 32 Ont. R. 266; 1 Ont. L. R. 309; (1903) A. C. 496.

**Subject-matter—Circulars—Forms.** The purely commercial or business character of a composition or a compilation does not oust the right to protection of copyright if time, labour and experience have been devoted to its production: *Church v. Linton*, 25 Ont. R. 131.

**Subject-matter.** Biographical sketches: *Gemmill v. Garland*, 14 S. C. R. 321.

**Subject-matter—"Newspaper:"** *Grossman v. Canada Cycle Co.* (1903) 5 Ont. L. R. 55.

(This section declared to be repealed by s. 47 (Pt. II.)

Section 5. Declared to be repealed by s. 47 (Pt. II.).

Section 6. Declared to be repealed by s. 47 (Pt. II.).

Section 8. Declared to be repealed by sec. 47 (Pt. II.).

See notes to s. 4, *supra*.

Section 8, sub-sec. 2. Foreign reprints: *Smiles v. Belford*, 1 Ont. A. R. 436; *Morang v. Publishers' Syndicate*, 32 Ont. R. 393; *Black v. Imperial Book Co.* (1904) 8 Ont. L. R. 9, affirmed 35 S. C. R. 488. And see note to s. 4 *supra*.

Section 11. Depositing copies—Neglect to deposit copy in Parliamentary library held not to prevent author from bringing action for infringement: *Griffin v. Kingston & Pembroke Ry. Co.*, 17 Ont. R. 660. (Now it is the duty of Minister of Agriculture to see to the deposit in Library of Parliament: see s. 12).

Section 14. Notice of copyright—Printing notice of copyright before same granted—Effect as to penalty under s. 40: See *Gemmill v. Garland*, 12 Ont. R. 139; 14 S. C. R. 321. See *ibid.* as to defect in form of notice.

Sections 17 and 18. Assignment of British copyright—Non-compliance with requirement of Imperial Act to register assignment—Locus standi of assignees: *Morang v. Publishers' Syndicate*, 32 Ont. R. 393. And see *Anglo-Canadian Music Publishers' Assn. v. Dupuis*, Q. R. 27 S. C. 485.

License to publish—Want of—Acquiescence in infringement—Estoppel: *Allen v. Lyon*, 5 Ont. R. 615.

**Section 22. Damages for infringement.**

Acquiescence in infringement — Estoppel: *Allen v. Lyon*, 5 Ont. R. 615.

Biographical sketches. Infringement established although defendant was referred by persons mentioned in plaintiffs' book to the same for information, and used the sketches: *Garland v. Gemmill*, 14 S. C. R. 321.

Printing and publishing from stereotype plates imported into Canada as "printing" or "publishing" within this section: *Frowde v. Parrish*, 27 Ont. R. 526. See also *Anglo-Canadian Music Publishers' Association (Limited) v. Winnifrith Bros.*, 15 Ont. R. 164; *Liddell v. Copp-Clarke Co.*, 19 Ont. P. R. 332; *Morang v. Publishers' Syndicate*, 32 Ont. R. 393.

**Infringement.** Textual copy: *Cadieux v. Beauchemin*, 31 S. C. R. 370.

**Section 40. (Falsely pretending to have copyright.)** An owner of a Canadian copyright in respect of a musical composition, who has the work printed abroad, and inserts notification of the existence of such copyright on copies published in Canada, does not incur penalty thereby: *Lancefield v. Anglo-Canadian Music Publishing Association (Limited)*, 26 Ont. R. 457.

## PART II.

**Section 47.** This section purports to repeal ss. 4, 5, 6, and 8 of Part I. It will be seen by reference to s. 45, that so much of the second part (including, of course, this repealing section) of this chapter as embodies the provisions of 52 Vict. c. 29, is not yet in force. A reference to the notes to s. 4, *supra*, will show that the Act 52 Vict. c. 29, has not, up to the present, received the royal assent.



# ANNOTATIONS.

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## CHAPTER 71.

### Trade Marks and Industrial Designs.

#### PART I.

##### TRADE MARKS.

Section 5. (Subject-matter of trade mark.) Essential elements of a trade mark are (1) Universality of right to its use, (2) Exclusiveness of such right: *J. P. Bush Mfg. Co. v. Hansen*, 2 Ex. C. R. 557.

Words which are, when taken separately, *publici juris*, may, when combined and applied to a specific manufacture, be the subject of a trade mark: *Smith v. Fair*, 14 Ont. R. 729. See S. C. 11 Ont. A. R. 755.

Property cannot be acquired in an ordinary English word expressing quality merely; *secus*, as to a foreign or classical word: *Partlo v. Todd*, 17 S. C. R. 196.

Geographical name used in secondary sense as part of title, and not merely descriptive of place of publication, is good as a trade mark: *Rose v. McLean Publishing Co.*, 24 Ont. A. R. 240.

Shop sign "Golden Lion" protected: *Walker v. Alley*, 13 Gr. 366.

"Pain Killer" and "Microbe Killer," held good: *Davis v. Kennedy*, 13 Gr. 523; *Radam v. Shaw*, 28 Ont. R. 612.

See, generally, *Crawford v. Shuttock*, 13 Gr. 149; *Partlo v. Todd*, 12 Ont. R. 171, 14 Ont. A. R. 444, 17 S. C. R. 196; *McCall v. Theal*, 28 Gr. 48; *Davis v. Reid*, 17 Gr. 69; *Kerry v. Les Sœurs de L'Asile de la Providence* (1878) 1 L. N. 472.

Common designation — Public use before registration: *Watson v. Westlake*, 12 Ont. R. 449; *Wilson v. Lyman*, 25 Ont. A. R. 303.

Newspaper name: *Carey v. Goss*, 11 Ont. R. 619.

Fancy name may be valid trade mark: *Provident Chemical Works v. Canada Chemical Mfg. Co.* (1902), 4 Ont. L. R. 545. See also *Gillett v. Lumsden* (1904), 8 Ont. L. R. 168; *Grand Hotel Co. of Caledonia v. Wil-*

son, [1904] A. C. 103; *Spilling Bros. v. O'Kelly*, 8 Ex. C. R. 426; *Spilling Bros. v. Ryall*, 8 Ex. C. R. 195.

"Hall-mark" on silver goods: *Gorham Mfg. Co. v. P. W. Ellis & Co.*, 8 Ex. C. R. 401.

#### REGISTRATION.

**Section 9.** Necessity for registration before action: *Smith v. Fair*, 14 Ont. R. 729. (It would appear that the French law is to the same effect: See *Goirand's French Commercial Law*, 2nd ed., p. 505.)

Registration of assignment not necessary to make the same valid: *Carey v. Goss*, 11 Ont. R. 619.

Ownership is a condition precedent to valid registration: *Partlo v. Todd*, 14 Ont. A. R. 444; and see *Groff v. Snow Drift Baking Powder Co.*, 2 Ex. C. R. 568.

"Prior user" means user before adoption by the registrant, not before registration: *Smith v. Fair*, 14 Ont. R. 729.

Prior registration of mark in United States does not invalidate subsequent registration in Canada: *Morse v. Martin*, 5 L. N. 99.

It is the duty of the Minister to refuse to register a trade mark where it is not clear that deception may not result from such registration: *In re Melchers and DeKuyper & Son*, 6 Ex. C. R. 83.

**Section 12.** Reference to Exchequer Court—Jurisdiction of court hereunder explained in *De Kuyper v. VanDulken* (1892), 3 Ex. C. R. 88.

#### ASSIGNMENT.

**Section 15.** A trade mark passes without express mention to a purchaser under a sale of stock in trade, "with the goodwill and all advantages pertaining to the name and business:" *Thompson v. McKinnon*, 21 L. C. J. 335. But see some discussion of this point in *Smith v. Fair*, 14 Ont. R. 729; Cf. *Goirand's French Commercial Law*, 2nd ed., p. 505.

The right of property in a registered specific trade mark is not saleable by itself under a writ of execution. Such a right can be sold, if at all, only as appurtenant to the business in which the trade mark has been used: *Gregg v. Bassett* (1902), 3 Ont. L. R. 263.

General assignment and particular assignment—Rights of assignees to registration in Canada: *J. P. Bush Mfg. Co. v. Hansen*, 2 Ex. C. R. 557.

RIGHT OF ACTION.

Section 19. The principle upon which the court proceeds is that it will not permit a person to sell his own goods as those of another: *McCall v. Theal*, 28 Gr. 48. Cf. the observations of Langdale, M.R., in *Perry v. Truefitt*, 6 Beav. 66, also *Sebastian on Trade Marks*, 4th ed., p. 1.

Section 20. Registration condition precedent to right of action: See notes to s. 9, *infra*.

Infringement—Pleadings. It is not necessary to allege that defendant used the mark with intent to deceive and to induce a belief that the goods on which the mark was used were made by the plaintiff: *Boston Rubber Shoe Co. v. Boston Rubber Co. of Montreal*, 7 Ex. C. R. 9.

See the following cases illustrative of the principles upon which the courts proceed in matters of infringement of trade marks: *DeKuyper v. VanDulken*, 24 S. C. R. 114, affirming 4 Ex. C. R. 71; *Davis v. Reid*, 17 Gr. 69; *Watson v. Westlake*, 12 Ont. R. 449; *Wilson v. Lyman*, 25 Ont. A. R. 303; *Carey v. Goss*, 11 Ont. R. 619; *Canada Publishing Co. v. Gage*, 11 S. C. R. 306, affirming 11 Ont. A. R. 402; *Spilling Bros. v. O'Kelly*, 8 Ex. C. R. 426; *Boston Rubber Shoe Co. v. Boston Rubber Co. of Montreal*, 32 S. C. R. 315; *Doran v. Hoga-dore*, 11 Ont. L. R. 321; *Kerstein v. Cohen*, 11 Ont. L. R. 450.

OFFENCES AND PENALTIES.

Section 21. Cf. the provisions of the French law in *Goirand's French Commercial Law*, 2nd ed., p. 514.

PART II.

INDUSTRIAL DESIGNS.

Section 35. (Right of action for infringement.) In an action for infringement of an industrial design for a cook-stove, and for an order to expunge defendant's design from the registry: Held, that as the weight of evidence established that the defendant's design was an obvious imitation of that of the plaintiff, the former should be enjoined from infringing, and that their design should be expunged: *Findlay v. Ottawa Furnace, etc., Co.* (1902), 7 Ex. C. R. 338. And see sec. 19, *supra*.

## PART III.

Sections 42 and 43. Application to rectify the register of trade marks may be made by way of counterclaim (under General Order of 7th March, 1904) to an infringement action: see *Spilling Bros v. O'Kelly*, 8 Ex. C. R. 426.

The amendments to the Exchequer Court Act since the decision in *Partlo v. Todd*, 17 S. C. R. 196, have not had the effect of giving that court exclusive jurisdiction to adjudicate as to the validity of a registered trade mark, and in answer to an action in the High Court of Justice for Ontario to restrain the infringement of a registered trade mark, its invalidity may be shown: *Provident Chemical Works v. Canada Chemical Mfg. Co.* (1902), 4 Ont. L. R. 545; approved in *Spilling Bros. v. O'Kelly*, 8 Ex. C. R. 426.

# ANNOTATIONS.

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## CHAPTER 77.

### Naturalization and Aliens Act.

Section 13. Defects in affidavits: *In re Webster*, 7 C. L. J. 39.

Deportation of alien—vide notes to Alien Labour Act, c. 97.

# ANNOTATIONS.

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## CHAPTER 79.

### Companies Act.

#### PART I.

##### JOINT STOCK COMPANIES.

**Section 2** (Application and validity). By the Dominion Act, 43 Vict. c. 67, the Bell Telephone Company of Canada was incorporated. The scope of its business was not confined within the limits of any one province. It was authorized to acquire any lines for the transmission of telephone messages "in Canada or elsewhere," and to construct and maintain its lines along, across, or under any public highways, streets, bridges, watercourses, or other such places, or across or under any navigable waters, "either wholly in Canada or dividing Canada from any other country," subject to certain restrictions. Held, that the scope of the company's business was within the express exception made by s. 92, s.-s. 10 (a) of the B. N. A. Act, 1867, from the class of local works and undertakings assigned thereby to provincial legislatures. Accordingly, the incorporating Act was within the exclusive competence of the Dominion parliament. Held, also, that the Ontario Act, 45 Vict. c. 71, passed to authorize the exercise of the above mentioned powers within the province of Ontario, was ultra vires, and could not by reason of having been passed on the application of the respondent company be validated as a legislative bargain: *Toronto v. Bell Telephone Co.* (1904), A. C. 52.

The incorporation of companies with power to operate beyond the boundary of one province, would seem to be clearly enough within the legislative authority of the Dominion Parliament, and the fact that a Dominion company thinks fit to confine the exercise of its powers to one province cannot effect its status or capacity as a corporation if the Act incorporating the company was originally within the legislative power of the Dominion Parliament: see *Colonial, etc., Association v. Attorney-General of Quebec* (1883), 9 A. C. 157.

See also the following cases illustrative of the foundations of federal authority in Canada to incorporate companies:—*Citizens Insurance Co. v. Parsons* (1881), 7 A. C. 96; *Tennant v. Union Bank of Canada* (1894), A. C. 31; *Attorney-General of Ontario v. Attorney-General of Canada* (1894), A. C. 189; *City of Halifax v. Western Assurance Co.* (1885), 18 N. S. R. 387; *Maritime Bank v. Receiver-General of New Brunswick* (1892), A. C. 437; *Re Lake Winnipeg Transportation, etc., Co.* (1891), 7 Man. R. at p. 259; *Longueil Nav. Co. v. City of Montreal* (1875), M. L. R. 3 Q. B. 172, and 15 S. C. R. 566; *Grand Trunk Railway v. Attorney-General of Canada* (1906), 23 T. L. R. 40; *In re Ontario Power Co. and Hewson*, 6 Ont. L. R. 11; *G. N. W. Tel. Co. v. Fortier*, Q. R. 12 K. B. 405.

A company incorporated by the Dominion Parliament cannot exercise its powers in the province of Quebec, without conforming to Arts. 364, 365, and 366 of the Civil Code: *Cooper v. McIndoe* (1887), 15 R. L. 276. See also *Bessemer Gas Engine Co. v. Mills*, 4 Ont. W. R. 325; and, contra, *McDiarmid v. Hughes*, 16 Ont. R. 570. Cf. on this point *Colonial, etc., Association v. Attorney-General of Quebec* (1883), 9 A. C. at p. 166.

#### INTERPRETATION.

**Section 3 (a).** Every company is a joint-stock company, except those private corporations which are incorporated without joint stock or shares: *Hamilton v. Stewiacke Valley Ry. Co.* (1897), 30 N. S. R. at p. 13.

**Section 3 (d).** "Subscribe" is equivalent to a taking or holding of shares: *National Insurance Co. v. Egleson* (1881), 29 Gr. 406. But see the definition of "subscriber" in *Re London Speaker Printing Co.* (1889), 16 Ont. A. R. at p. 516.

#### PRELIMINARIES.

**Section 4** (Irregularity in organization). A shareholder cannot avoid liability as a contributory by setting up, in proceedings for winding-up, the fact of defective organization: *Common v. McArthur* (1898), 29 S. C. R. 239. But see *Quebec and Richmond Ry. Co. v. Dawson* (1851), 1 L. C. R. 366.

**Section 5** ("Banking business"). See note to s. 121 (Part II.), *infra*.

## COMMENCEMENT OF BUSINESS.

Section 26. See *North Sydney Mining and Transportation Co. v. Greener* (1898), 31 N. S. R. 41.

Section 27 (Forfeiture of charter). See *Brooke v. Bank of Upper Canada* (1867), 4 Ont. P. R. 162; *La Compagnie du Cap Gibraltar v. Lalonde* (1889), M. L. R. 5 S. C. 127; *Massawippi Valley Ry. Co. v. Walker* (1871), 3 R. L. 450; *Windsor Hotel Co. v. Murphy* (1877), 1 L. N. 74; *Quebec and Richmond Ry. Co. v. Dawson* (1851), 1 L. C. R. 366.

## POWERS AND DUTIES.

Sections 28 to 30. (Disposing of property). If a corporation dispose of its whole stock-in-trade or its assets so as to prevent the carrying out of the objects for which it was formed, it thereby commits an act which is *ultra vires*, and which practically puts an end to its existence; but if the disposal of such property is within the purposes for which it was created, or is only partial, there would seem to be no sufficient reason to restrain the company from effecting it: *Per Cross, J.*, in *Montreal Telegraph Co. v. Low* (1883), 27 L. C. J. at p. 277.

(Borrowing and mortgaging). The power to borrow money implies the power to mortgage: *In re Nash Brick and Pottery Mfg. Co.* (1873), 3 N. S. D. 254.

"It cannot be successfully contended . . . that a statutory corporation is incapable of mortgaging its property, unless its incapacity to do so is either expressly declared, or is to be gathered by implication from the terms of the Act of incorporation. In other words, no enabling power is requisite to confer the authority to mortgage, but *prima facie* every corporation must be taken to possess it. If its rights in this respect are limited, it must be by force of some disability imposed by the instrument creating it, whether that instrument be a statute or a royal charter; and such a disability may be deduced either from the object of the corporation being limited to certain specific objects, or from its property being subject to charges or trusts in favour of the public with which a mortgage would be inconsistent." *Per Strong, J.*, in delivering the judgment of the Court in *Bickford v. Grand Junction Railway Co.* (1877), 1 S. C. R. at pp. 729, 730. See also *Waterous Engine Co. v. Palmerston* (1892), 21 S. C. R. 556; *Neelon v. Thorold* (1893), 22 S. C. R. 390; *MacArthur v. Portage la Prairie* (1894), 9 Man. R. 588; *Bernardin v. North Dufferin* (1891), 19 S. C. R. 581; *Adams & Burns v. Bank of*



Montreal (1901), 32 S. C. R. 219; *Farrell v. Caribou Gold Mining Company* (1897), 30 N. S. R. 199. And see notes to s. 69, *infra*.

Where directors had bought goods on the credit of the company, which by the Act of incorporation it had no power to do, they were held not liable on a warranty of authority or otherwise: *Struthers v. McKenzie* (1897), 28 Ont. R. 381. See also *Great Western Railway Co. v. Preston and Berlin Ry. Co.* (1859), 17 U. C. Q. B. 477; *Calvin v. Provincial Insurance Co.* (1870), 20 U. C. C. P. 267; *Bernardin v. North Dufferin* (1891), 19 S. C. R. 581; *Fairchild v. Ferguson* (1892), 21 S. C. R. 484; *Charlebois v. Delap* (1896), 26 S. C. R. 221.

Discounting of notes held ultra vires of a company carrying on an agency and commission business: *Walmsley v. Rent Guarantee Co.* (1881), 29 Gr. 484. But see note to s. 121 (Part II.), *infra*.

Corporations other than banks may validly lend at any stipulated rate of interest: *Royal Canadian Insurance Co. v. Montreal Warehousing Co.* (1880), 3 L. N. 155. And see *La Société Permanent district d'Iberville v. Rossiter* (1881), 4 L. N. 269. See also the provisions of ss. 3, 4, and 5 of the Interest Act (R. S. C., 1906, c. 120).

It is an elementary principle that a court has no jurisdiction to interfere with the internal management of companies acting within their powers: *Burland v. Earle*, [1902] A. C. 83.

Effect of sanction of irregular act by majority of shareholders: *Purdom v. Ontario Loan and Debenture Co.*, 22 Ont. R. 597; *Montreal, etc., Light Co. v. Robert*, [1906] A. C. 196.

Effect of disorganization of company on right to bring action: *La Compagnie du Cap Gibraltar v. Lalonde* (1889) M. L. R. 5 S. C. 127; *Massawippi Valley Railway Co. v. Walker* (1871), 3 R. L. 450.

(Contracts—Seal). Although s.-s. 2 of s. 32 enacts that it shall not be necessary to have the seal of the company affixed to contracts made on behalf of the company by its agents, officers, or servants, the following cases are instructive:—

“All deeds executed under the corporate seal of an incorporated company which is regularly affixed, are binding on the company unless it appears by the express provisions of some statute creating or affecting the company, or by necessary or reasonable inference from the enactments of such statute, that the legislature meant that such deed should not be executed; and the directors of the company have authority to affix the seal of

the company to all such deeds not so, as above, forbidden by the legislature to be executed, unless they are by the express provisions of, or by necessary or reasonable inference from, the enactments of such statute forbidden to affix the seal of the company to the particular deed for the time being under consideration, without compliance with some condition precedent prescribed as being essential to the validity of such deed, and which condition precedent has not been complied with." Per Gwynne, J., in *Hovey v. Whiting* (1887), 14 S. C. R. at p. 531.

A company is not bound by an executory contract unless made in pursuance of its charter or under its corporate seal; but, where the contract is executed, and within the purposes for which the company was created, and the company has had the benefit of the contract, it may be enforced: See *Bernardin v. North Dufferin*, 19 S. C. R. 581. See also *Davis v. Canada Farmers Ins. Co.*, 39 U. C. Q. B. 452.

See generally:—

(a) Instances where executed contracts not under seal were enforced: *Davis v. Grand River Navigation Co.* (1840), 6 U. C. Q. B. (O.S.) 59; *Pim v. Municipal Council of Ontario* (1860), 9 U. C. C. P. 304; *Perry v. Ottawa* (1864), 23 U. C. Q. B. 391; *Ontario Western Lumber Co. v. Citizens' Telephone Co.* (1896), 32 C. L. J. 237; *Thompson v. Brantford Electric, etc., Co.* (1898), 25 Ont. A. R. 340; *McDonald v. Upper Canada Mining Co.* (1868), 15 Gr. 179; *McIntosh v. Commissioners, etc., of Halifax* (1888), 20 N. S. R. 430; *Diamond v. St. George Lime Co.*, 4 N. B. R. 537; *London Life Insurance Co. v. Wright* (1880), 5 S. C. R. 466; *Dimock v. New Brunswick Mar. Ins. Co.* (1849), 6 N. B. R. 398; *Forest v. Great North West Ry. Co.* (1899), 12 Man. R. 472; *Clarke v. Hamilton and Gore Mechanics' Institute* (1854), 12 U. C. Q. B. 178; *Murdock v. Manitoba S. W. Col. Ry. Co.* (1881), Man. Rep. (Temp. Wood) 334.

(b) Instances where executed contracts not enforced for want of seal: *Seelye v. Lancaster Mill Co.* (1841), 3 N. B. R. 377; *Jennett v. Sinclair* (1876), 10 N. S. R. 392; *Great Western Ry. Co. v. Preston and Berlin Ry. Co.* (1858), 17 U. C. Q. B. 477; *Hamilton and Port Dover Ry. Co. v. Gore Bank* (1873), 20 Gr. 190; *Marshall v. School Trustees* (1855), 4 U. C. C. P. 373; *Stoneburgh v. Brighton* (1859), 8 U. C. C. P. 155; *Curran v. North Norfolk* (1892), 8 Man. R. 256; *United Trust Co. v. Chilliwack*, 5 B. C. R. 128; *Birney v. Toronto Milk Co.*, 5 Ont. L. R. 1.

(c) Instances where executory contracts not under seal were enforced: *Ontario Co-operative Stonecutters' Assn. v. Clark* (1880), 31 U. C. C. P. 280; *Albert Cheese Co. v. Leeming* (1880), 31 U. C. C. P. 272; *Ellis v. Midland Ry. Co.* (1882), 7 Ont. A. R. 464; *Whitehead v. Buffalo, etc., Ry. Co.* (1859), 7 Gr. 351, 8 Gr. 157; *Blue v. Gas and Water Co.* (1849), 6 U. C. Q. B. 174; *Finlayson v. Elliott*, 21 Gr. 325; *McEdwards v. Ogilvie Milling Co.* (1886), 4 Man. R. 1.

(d) Instances where executory contracts not enforced for want of seal: *Armstrong v. Portage, Westbourne, etc., Ry. Co.* (1884), 1 Man. R. 344; *Quinn v. School Trustees* (1850), 7 U. C. Q. B. 130; *Houck v. Town of Whitby* (1868), 14 Gr. 671; *Bartlett v. Amherstburg* (1856), 14 U. C. Q. B. 152; *Smith v. London Gas. Co.* (1859), 7 Gr. 112; *Wingate v. Enniskillen Oil Refining Co.* (1864), 14 U. C. C. P. 379; *Brown v. Lindsay* (1874), 35 U. C. Q. B. 509.

(Bills and Notes). A company may be a party to a bill or note. See s. 47 of Bills of Exchange Act (R. S. C., 1906, c. 119), *infra*.

(Matter requiring majority). The Court will not interfere with the doing of an act by a company which should have been sanctioned by a majority of its shareholders before the act was done, if such sanction can be afterwards obtained: *Purdom v. Ontario Loan and Deben. Co.*, 22 Ont. R. 597; *Montreal, etc., Power Co. v. Robert*, [1906] A. C. 196.

As to provisions of s. 29, respecting the holding of real estate, see notes to s. 209 (Part III.), *infra*.

If a company enters into a transaction which is *ultra vires*, and litigation ensues, in the course of which a judgment is entered by consent, such judgment is as binding upon the parties as a judgment after a contest, and will not be set aside because the transaction was beyond the power of the company: *Charlebois v. Delap*, (1896), 26 S. C. R. 221.

(Torts by corporations). A municipal as well as a trading corporation may be liable for malicious prosecution, arising out of the acts of an officer of the corporation: *Wilson v. City of Winnipeg* (1887), 4 Man. R. 193. And see *Harris v. Brunette Saw M. Co.*, 3 B. C. R. 172.

(Criminal breach of duty). Under s. 247 of the Criminal Code, a corporation may be indicted for omitting, without lawful excuse, to perform the duty of avoiding danger to human life from anything in its charge or under its control: *Union Colliery Co. v. The Queen* (1900), 31 S. C. R. 81. But see *Attorney-General v. Hamilton St. Ry. Co.* (1897), 24 Ont. A. R. 170, and *Re Chapman and City of London*, 19 Ont. R. 33.

Preference shares—Agreement to create in contravention of statute—Ultra vires: *Colonist Printing and Publishing Co. v. Dunsmuir* (1902), 32 S. C. R. 679.

Section 33 ("Limited"). See ss. 82, 114 and 115, *infra*.

#### LIABILITY OF SHAREHOLDERS.

Sections 38 and 39 (Shares illegally issued). Where shares in the capital stock of a joint-stock company have been illegally issued below par, the holder of the shares is not thereby relieved from liability from calls for the unpaid balances of their par value: *Northwest Electric Co. v. Walsh* (1898), 29 S. C. R. 33. Leave to appeal to Privy Council refused.

(Contract for shares). There is no difference between a contract to take shares and any other contract. So long as there is an agreement established, the form is not material: *Re Bolt and Iron Company, Hovenden's Case* (1884), 10 Ont. P. R. 434. See also *Bishop Engraving and Printing Co., Ex parte Howard* (1887), 4 Man. R. 429; *Halifax Cigarette Co. v. Moir* (1895), 28 N. S. R. 45.

Subscriptions obtained by surprise, fraud and false statements may be avoided: *Provincial Insurance Co. v. Brown* (1860), 9 U. C. C. P. 286. And see *Glen Brick Co. v. Shackwell* (1870), 2 R. L. 625.

Shares in a joint stock company may be paid for in money or money's worth, and if paid for by a transfer of property, they must be treated as fully paid up: *In re Hess Mfg. Co.; Edgar v. Sloan* (1894), 23 S. C. R. 644. And see same case on point of promoter selling property to company.

S. signed a subscription for shares in a company to be formed, and a promissory note for the first payment, both of which documents he delivered to the promoter of the company to which they were transferred after incorporation. In an action for payment of calls, S. swore that the stock was to be given to him in part payment for the good will of his business, which the company was to take over. The promoter testified that the shares subscribed for were to be an addition to those to be received for the good will. Held, that though S. could before incorporation, constitute the promoter an agent to procure the allotment of shares for him, and give his note in payment, yet the possession by the promoter did not relieve the company from the duty of inquiring into the extent of his authority and, whichever of the two statements at the trial was true, the pro-

moter could not bind S. by an unconditional application: *Ottawa Dairy Co. v. Sorley* (1904), 34 S. C. R. 508.

The defendants undertook by deed for valuable consideration to take shares in a company incorporated under the British Columbia Companies Act (R. S. B. C. c. 44), when issued and allotted. This undertaking was delivered to an agent of the company. Held that such undertaking was not revocable as a mere offer would be: *Nelson Coke and Gas Co. v. Pellatt* (1902), 4 Ont. L. R. 481.

Quebec law—Payment for shares—Price of property sold to company by promoters: *Laroque v. Beauchemin* (1897), A. C. 358. And see *Rogers v. Hersey* (1864), 15 L. C. R. 141; *Rascony v. Union Navigation Co.* (1878), 24 L. C. J. 133.

Joint and several liability—Paid up shares—C. S. C. c. 63, ss. 33, 34 and 35; *McKenzie v. Kittridge* (1879), 4 S. C. R. 368.

Mortgagee taking transfer of shares absolute in form—Right to show real nature of transaction: *Page v. Austin* (1884), 10 S. C. R. 132.

Individual liability where no real corporate existence: see *Cullen v. Nickerson*, 10 U. C. C. P. 549.

Allotment of shares below par—Subsequent transfer—Liability of transferee holding in good faith and without notice—27 & 28 Vict. c. 23 (Can.): *McCracken v. McIntyre* (1877), 1 S. C. R. 479.

Payment for shares in cash and services—Absence of written agreement as to such arrangement—Liability for payment in cash in full: *Morris v. Union Bank of Canada* (1899), 31 S. C. R. 594. See also *Turner v. Cowan* (1903), 34 S. C. R. 160, decided under the British Columbia Companies' Act (R. S. B. C. c. 44). Also *Inglis v. Wellington Hotel Co.* (1878), 29 U. C. C. P. 387, decided under R. S. O. 1877 c. 150.

Conditional subscription—Condition not fulfilled—Representations of agent—Corroborations: *Ontario Ladies' College v. Kendry* (1905), 10 Ont. L. R. 324. See also *Clarke v. Union Fire Ins. Co.*, *Caston's Case* (1884), 10 Ont. P. R. 339.

(Allotment and subscription generally). See the following: *Davidson v. Grange* (1854), 4 Gr. 377; *Union Fire Insurance Co. v. O'Gara* (1883), 4 Ont. R. 359; *Ingersoll and Thamesford Gravel Road Co. v. McCarthy* (1858), 16 U. C. Q. B. 162; *Canada Life Assurance Co. v. Peel General Mfg. Co.* (1879), 26 Gr. 477; *Kingston Street Railway v. Foster* (1879), 44 U. C. Q. B. 552; *Ross v. Machar* (1885), 8 Ont. R. 417; *Stephenson v. Vokes* (1896), 27 Ont. R. 691; *Nasmith v. Manning*

(1880), 5 Ont. A. R. 126; 5 S. C. R. 417; Long v. Guelph Lumber Co. (1880)), 31 U. C. C. P. 129; Smart v. Bowmanville Machine Co. (1875), 25 U. C. C. P. 503; Côté v. Stadacona Insurance Co. (1881), 6 S. C. R. 193; Page v. Austin (1882), 10 S. C. R. 132; Beatty v. Neelon (1886), 13 S. C. R. 1; Magog Textile and Print Co. v. Price (1887), 14 S. C. R. 664; In re Publishers' Syndicate—Mallory's Case (1902), 3 Ont. L. R. 552; Cazalais v. Picotte (1900), Q. R. 18 S. C. 538; Re Canadian Tin Plate Co., 12 Ont. L. R. 594.

(Surrender of shares). A shareholder cannot, without statutory authority therefor, surrender his shares, and thus get rid of his liability: Common v. McArthur (1898), 29 S. C. R. at p. 245.

Section 40. (Set-off). See Turner v. Cowan (1903), 34 S. C. R. 160.

Sections 41 and 42. (Shares in Trust). The fact of shares being entered in the books of company and in the transfer as held "in trust" is sufficient of itself to show that the title of the seller was not absolute, and to put the purchaser on inquiry as to the right to sell the shares: Raphael v. McFarlane (1890), 18 S. C. R. 183. And see In re Hess Mfg. Co.: Edgar v. Sloan (1894), 23 S. C. R. 644.

Shares in name of third person: Allan v. Phelps (1876), 23 Gr. 395; Caffrey v. Phelps (1876), 24 Gr. 344.

#### PROSPECTUS.

Section 43. The origin of this section is to be found in s. 38 of the English Companies Act, 1867, and therefore cases illustrative of the interpretation placed by the English courts on that, and subsequent legislation on the same subject, may be referred to. It will be observed that the section protects "shareholders" only. See Derry v. Peek (1889), 14 A. C. 337; Shephard v. Broome (1904), A. C. 342; Delany v. Keogh (1905), 2 Ir. R. 267; Exploring Co. v. Kotekmann (1906), 94 L. T. 235; Mackleay v. Tait (1906), A. C. 24; Twycross v. Grant (1877), 2 C. P. D. 469; Arkwright v. Newbold (1880), 17 Ch. D. 301; Capel & Co. v. Sim's Ship Composition Co. (1888), 58 L. T. 807; Cornell v. Hay (1873), L.R. 8 C.P. 328; Gover's Case (1875), 1 Ch. D. 182. And see the following Canadian cases: Petrie v. Guelph Lumber Co. (1886), 11 S. C. R. 450; Beatty v. Neelon (1886), 13 S. C. R. 1; Patterson v. Turner (1902), 3 Ont. L. R. 373; Kennedy v. Acadia Pulp, etc., Mills, 38 N. S. R. 291.

## STOCK OF OTHER COMPANIES.

Section 44. See notes to s. 76 of the Bank Act (R. S. C. 1906 c. 29) ante.

## CAPITAL STOCK.

Section 45. (Stock—"Personal Estate"). Notwithstanding that by the Devolution of Estates Act (R. S. O. c. 108), the whole estate is now to be administered as personalty, the court construed the words "personal estate" in s. 31, s.-s. (2), R. S. O. c. 50, to mean personal estate proper: *Re Nixon* (1889), 13 Ont. P. R. 314.

(Executions against stock). See *Robinson v. Grange*, 18 U. C. Q. B. 260; *Woodruff v. Harris*, 11 U. C. Q. B. 490; *Hatch v. Rossland*, 5 Ont. P. R. 223; *Brock v. Ruttan*, 1 U. C. C. P. 218.

(Assignment of stock). Rights of assignee against execution creditor: *Morton v. Cowan*, 25 Ont. R. 529.

See notes to ss. 38-42, supra.

Section 46. (Allotment of stock). See notes to ss. 38-42, under title "Liability of Shareholders," supra.

Sections 47, 48 and 49. (Preference stock). In the case of *Long v. Guelph Lumber Co.* (1880), 31 U. C. C. P. 129, a case decided under Ontario legislation similar in its provisions to this section, it was held that a by-law declaring: "1. The company guarantees 8 per cent. yearly to the extent of the preference stock, up to the year 1880, and over that amount (8 per cent.), the net dividends will be divided among all the shareholders pro rata." "2. Should the holders of preference bonds so desire, the company binds itself to take the stock back during the year 1880 at par, with interest at 8 per cent. per annum, on receiving 6 months' notice in writing, etc.," was not ultra vires in respect of the first condition, as its proper construction was, not that the interest was to be paid at all events, and so possibly out of capital, but only if there were profits out of which it could be paid; but that the second condition was ultra vires for that the Act neither expressly nor impliedly authorized the company to accept a surrender or cancel the shares, repaying the amount thereof. Held, further, that a subscriber for such preference stock could not recover back money paid therefor, for, notwithstanding that one or both of the conditions might be invalid, the shares themselves were valid, there being authority to issue preference shares, and the plaintiff having subscribed for preference shares, and having got them he

became a shareholder in the company. See also *Colonist Printing and Publishing Co. v. Dunsmuir*, 32 S. C. R. 679.

Section 50, s.-s. 2. (Trusts). If a promoter purchases property for the company from a vendor who is to be paid by the company when formed, and by a secret arrangement with the vendor a part of the price, when the agreement is carried out, comes into the hands of the promoter, that is a secret profit which he cannot retain; and if any part of such secret profit consists of paid up shares of the company issued as part of the purchase price of the property, such shares may, in winding-up proceedings, be treated, if held by the promoter, as unpaid shares for which the promoter may be made a contributory: *In re Hess Mfg. Co., Edgar v. Sloan* (1894), 23 S. C. R. 644. See *Lasell v. Hannah*, 37 S. C. R. 324; *Madden v. Dimond*, 12 B. C. R. 80.

A subscription for stock by a person in his own name, but really as trustee, is valid: *Davidson v. Grange* (1854), 4 Gr. 377.

There are similar provisions to those in this section in the Banking Act. See notes to s. 52 of the Banking Act, R. S. C. 1906, vol. 1, c. 29.

Section 51. (Increase of capital). Powers of directors—Unauthorized issue of stock—Mortgage of shares: *Page v. Austen* (1882), 10 S. C. R. 132. And see *Knight v. Whitfield*, *Cass. Dig.* (2nd ed.) 186.

#### CALLS.

Section 58. (First year "ten per cent."). The provision as to "ten per centum" of stock being paid in within one year of incorporation is directory only. See *Ontario Investment Association v. Sippi* (1890), 20 Ont. R. 440, where it was held that an otherwise valid transfer was not invalidated by the fact that the "ten per centum" mentioned was not called in and paid.

(Liability for calls.) Generally there is no liability to pay for shares until a call is made, and notice thereof given to the shareholder: *Re Haggert Bros. Mfg. Co.: Peaker and Runnion's Case* (1892), 19 Ont. A. R. 582.

A mandamus lies at the instance of a creditor, being a shareholder, to compel directors to make calls: *Harris v. Dry Dock Co.* (1869), 7 Gr. 450.

Section 59. (Validity). Where the charter provided that shares were to be issued in conformity with by-laws, and be



paid in such sums and at such times as the directors should appoint. Held, not essential to company's right to sue for calls that by-laws for issuing stock should have been made, provided the directors who made the calls were duly appointed: *Portland and Lancaster Steam Ferry Co. v. Pratt* (1850), 7 N. B. R. (2 Allen) 17. But see *Ontario Insurance Co. v. Ireland* (1855), 5 U. C. C. P. 139, where it was held, under 12 Vict. c. 166, s. 9 (Can.), that a first call might be made by a quorum of the directors, though the other calls were required to be made by a majority.

If calls are made by directors in such a way as to discriminate between one set of shareholders and another, the Court may interfere to protect those prejudiced: *Christopher v. Noxon* (1884), 4 Ont. R. 672.

The power of the directors to make calls cannot be delegated: *Provident Life Assurance Co. v. Wilson* (1865), 25 U. C. Q. B. 53; *European and N. A. Ry. Co. v. McLeod*, 16 N. B. R. 3; *Paul v. Kobold*, 3 W. L. R. 407.

In an action for calls the onus of showing that the board of directors making the call was not properly constituted is on the shareholder: *National Insurance Co. v. Egleson* (1881), 29 Gr. 406.

Notice of a call is duly given at time of mailing it: *Union Fire Insurance Co. v. Fitzsimmons* (1882), 32 U. C. C. P. 602; *Union Fire Insurance Co. v. O'Gara* (1883), 4 Ont. R. 359. See contra, *Ross v. Machar* (1885), 8 Ont. R. 417.

In the absence of contrary special provision, proof of fact of posting call to shareholder's address is sufficient evidence of call having been made. See *Ross v. Converse* (1883), 27 L. C. J. 143; *Bank of Liverpool v. Bigelow* (1878), 12 N. S. R. 236.

Non-compliance of notices with resolution authorizing calls, in respect of date of payment, will invalidate call: *London Gas Co. v. Campbell* (1856), 14 U. C. Q. B. 143.

As to other irregularities: See *Canada Car and Manufacturing Co. v. Harris* (1874), 24 U. C. C. P. 380; *North West Electric Co. v. Walsh* (1898), 29 S. C. R. 33; *Union Fire Insurance Co. v. O'Gara* (1883), 4 Ont. R. 359.

**Section 60.** Where there is nothing in the Act of incorporation to the contrary, a company may take a note from a shareholder for the amount of a call: *St. Stephen Branch Ry. Co. v. Black* (1870), 13 N. B. R. 139.

**Section 62. (Forfeiture of shares).** The forfeiture arising hereunder is a cumulative remedy, and does not preclude the right of a creditor to pursue other remedies where a forfeiture has not been declared hereunder. See *Harris v. Dry Dock Company* (1859), 7 Gr. 450; *Marmora Foundry Company v. Jackson* (1852), 9 U. C. Q. B. 509.

Sale of shares under forfeiture: *Gilman v. Royal Canadian Insurance Co.* (1884), 7 L. N. 352, s.c. in *M. L. R.* 1 S. C. 1.

The power of forfeiture is to be exercised in the interests of the company, and not for the benefit of a shareholder: *Common v. McArthur*, 29 S. C. R. 239.

Impeachment of forfeiture on the ground of irregularities. See *Nellis v. Second Mutual Building Society of Ottawa* (1881), 29 Gr. 399.

Courts will not favour forfeiture. The Act must be strictly complied with: *Robertson v. Banque d'Hoche-laga* (1881), 4 L. N. 314.

**Section 63. (Enforcement of payment).** In an action for calls it is not necessary to show the enactment of a by-law regulating the mode of making calls. Where no by-law exists the calls may be made as prescribed by the directors: *Rascony Woollen & Cotton Mfg. Co. v. Desmarais* (1886), *M. L. R.* 2 S. C. 381. To the same effect is *Union Fire Insurance Co. v. O'Gara* (1883), 4 Ont. R. 359. On an action for calls the onus as to issue of irregularity is on the shareholder: *National Insurance Co. v. Egleson* (1881), 29 Gr. 406. See also notes to sections 38 and 40 of the Bank Act, *R. S. C.* 1906, c. 29, ante.

Where shareholders have assisted in the making of calls, they cannot afterwards object that the calls were improperly made: *Christopher v. Noxon* (1884), 4 Ont. R. 672.

Where shares have been illegally issued below par, the holder is not thereby relieved from liability for calls for the whole unpaid balance of their face value: *North-West Electric Co. v. Walsh* (1898), 29 S. C. R. 33.

An action by a creditor of the company against a shareholder does not depend upon a call having been made by the directors: *Cockburn v. Starnes* (1857), 2 L. C. J. 114.

#### TRANSFER OF SHARES.

**Section 64. (Unregistered transfer).** Where shares were transferred to H., but not registered in the company's books, yet it appeared that H. had acted for some time as pre-

Section 75. (Qualification). In *Kiely v. Smyth* (1879), 27 Gr. 220, shares were transferred to a person to qualify him for election as a director before any by-law of the company was passed settling the amount of stock required to qualify. Held, that this did not prevent the transfer of stock until such a by-law was passed, but left it as at common law, so that it might be transferred by word of mouth. And see *Toronto Brewing and Malting Co. v. Blake* (1882), 2 Ont. R. 175.

Section 77. (Election). The fact that shares are purchased and paid for with a view to influencing an election is not material, so long as they are actually acquired: *Toronto Brewing and Malting Co. v. Blake* (1882), 2 Ont. R. 175.

Candidates for the directorate are not qualified as scrutineers at an election: *Dickson v. McMurray* (1881), 28 Gr. 533.

Where a new board of directors is elected before the term of office of their predecessors expires, a mandamus will lie to the company to proceed to another election on the day fixed by charter: *The Queen v. Bank of Upper Canada* (1849), 5 U. C. Q. B. 338.

Quo warranto will not lie in the case of elections to the board of an ordinary trading corporation in Ontario: *The Queen v. Hespeler* (1854), 11 U. C. Q. B. 222. But see *Re Moore and Port Bruce Harbour Co.* (1857), 14 U. C. Q. B. 365.

As to jurisdiction in equity to set aside election when person subscribes for stock to qualify to vote on the assurance that if the candidates he voted for are elected his subscription would be cancelled: See *Davidson v. Grange* (1854), 4 Gr. 377.

#### POWERS OF DIRECTORS.

Section 80. (By-laws). See note to section 132 (Part II.).

Section 80 (d). (Appointing agents). In the case of a railway company, it was held that the directors had, in the absence of statutory power, an inherent right to appoint necessary officers and agents: *Falkiner v. Grand Junction Ry.* (1883), 4 Ont. R. 350. And see *Howarth v. Singer Mfg. Co.* (1883), 8 Ont. A. R. 264.

(Salaries and remuneration—President's salary). The president and vice-president of a company drew for several years, without proper authority, but with the acquiescence of their co-directors, elected by, and closely connected with, the majority of the shareholders, large sums, ostensibly as salaries as general manager

and managing director, respectively:—Held, that the propriety of the payments could be inquired into at the instance of dissatisfied shareholders, although the majority were prepared to ratify them: *Earle v. Burland* (1899), 27 Ont. A. R. 540.

Claims for arrears of salary, made by persons occupying the position of president and vice-president of a company, such salary being payable under resolutions duly passed therefor, are valid; and upon the liquidation of the company are payable in priority to the claims of the general body of creditors: *Fayne v. Langley* (1899), 31 Ont. R. 254.

And see *Victoria Mutual Fire Ins. Co. v. Thompson* (1882), 32 U. C. C. P. 476.

**Section 80 (g). (General powers).** Directors can assign property of company to a trustee for benefit of creditors of company: *Hovey v. Whiting* (1887), 14 S. C. R. 515.

Directors of mercantile corporation may raise money on deposit receipt: *Merchants Bank v. Hancock, Re Hamilton Knitting Co.* (1883), 6 Ont. R. 285.

Undertaking by directors not in ordinary course of company's business not binding on company without ratification: *Hamilton and Port Dover Ry. Co. v. Gore Bank* (1873), 20 Gr. 190.

But such ratification may be express or by acquiescence. If company elects to repudiate undertaking it should disclose its election promptly. See *Conant v. Miall* (1870), 17 Gr. 574; *Hereford Railway Co. v. The Queen* 24 S. C. R. 1; *Cushing Sulphite Co. v. Cushing*, 37 N. B. R. 313.

Directors cannot delegate to officers or third parties its statutory powers: *Re Bolt and Iron Co.: Hovenden's Case* (1884), 10 Ont. P. R. 434; *Re Pakenham Pork Packing Co.*, 12 Ont. L. R. 100.

**Contract—President of company—Right to sue in his own name:** *Saxton v. Ridley* (1856), 13 U. C. Q. B. 522.

President or director of company not its agent without special authority, or proof of facts constituting estoppel: *Almon v. Law* (1894), 26 N. S. R. 340.

The general manager of a commercial corporation cannot make a binding agreement for the sale of its real estate without special authority: *Calloway v. Stobart, Sons, & Co.* (1904), 35 S. C. R. 301.

**Managing director—Powers—Trading company—Promissory note—Absence of by-law conferring authority:** *Imperial Bank v. Farmers' Trading Co.*, 13 Man. L. R. 412. And see *In re Brook Co.*, 7 Que. P. R. 206;

*Lasell v. Hannah*, 37 S. C. R. 324; *Madden v. Dimond*, 12 B. C. R. 80.

#### LIABILITY OF DIRECTORS AND OFFICERS.

Section 82 (Representations). While directors who act in excess of their authority may in certain cases become liable to those with whom they deal on an implied warranty of their authority, yet a representation by a director founded on a mistaken view of the extent of his authority in point of law, will not render him liable to the person to whom it was made: *Struthers v. McKenzie* (1897), 28 Ont. R. 381.

(Bills and notes). A bill drawn by one defendant, as secretary, on and accepted by the other defendant, as president, of a railway company, held not to come within s. 13 of 18 Vict. c. 182, as being accepted by the president, and countersigned by the secretary; but, held further, that they were personally responsible: *Bank of Montreal v. Smart* (1860), 10 U. C. C. P. 15.

The manager of an incorporated company, in payment for goods purchased by him as such, gave a promissory note beginning "Sixty days after date we promise to pay" and signed "R., manager O. L. Co." In an action against the individual members of the company the defence was that R. alone was liable, and that the words "manager," etc., were merely descriptive of his business. Held, that as the evidence established that both R. and the payees of the note intended to make the company liable, and as R. had authority, as manager, to make a note on which the company would be liable, and as the form of the note was sufficient to effect that purpose, the holders were entitled to recover against the company: *Fairchild v. Ferguson* (1892), 21 S. C. R. 484. And see *Bryant v. Banque du Peuple* (1893), A. C. 170; *Bridgewater Cheese Co. v. Murphy* (1894), 26 Ont. R. 327, 23 Ont. A. R. 66; *Madden v. Cox* (1880), 5 Ont. A. R. 473; *Brown v. Howland* (1885), 9 Ont. R. 48, 15 Ont. A. R. 750; *Walmsley v. Rent Guarantee Co.* (1881), 29 Gr. 484; *Thames Navigation Co., Ltd. v. Reid*, 13 Ont. A. R. 303; *Wade v. Kendrick*, 37 S. C. R. 32.

(Omission of word "Limited"). Where there is a non-compliance, by directors or officers of company, with the provisions of secs. 33, 114 and 115, as to the use of the word "limited," they may be made personally liable in the matter. See *Howell Lithographic Co. v. Brethour* (1899), 30 Ont. R. 204.

(Contracts with company). Where a voidable contract, fair in its terms, and within the powers of the company, has been entered into by its directors, with one of the directors as sole vendor, such director, although vendor, may vote as a shareholder in the general meeting of shareholders to ratify such contract: *North-West Transportation Co. v. Beatty* (1887), 12 A. C. 589.

Directors not bound to pledge their own credit for benefit of company: *Christopher v. Noxon*; *Re Ingersoll Gas Co.* (1883), 4 Ont. R. 672.

(Conduct of directors inter se). Fraud or harsh treatment practised by majority of directors against minority will be relieved against: *Waddell v. Ontario Canning Co.* (1889), 18 Ont. R. 41.

Where a president of a company was appointed by board of directors to be solicitor for the company, and acted as such, it was held in winding-up proceedings that he was assimilated to a solicitor acting on behalf of himself and co-trustees, and was disentitled to recover profit costs for legal business done for company, other than court business: *Re Mimico Sewer Pipe Co.* (1895), 26 Ont. R. 289.

(Promoters' liability). *Re Hess Mfg. Co., Edgar v. Sloan* (1894), 23 S. C. R. 614, may be regarded as a ruling case so far as the consequences of the fiduciary relationship of a promoter to the company is concerned. By the judgment of the Court, delivered by Sir Henry Strong, C.J., it was, inter alia, decided that a promoter who purchases property with the intention of selling it to a company to be formed does not necessarily hold such property in trust for the prospective company, but he stands in a fiduciary relation to the latter, and if he sells to them must not violate any of the duties devolving upon him in respect to such relationship. . . . Again, if a promoter purchases property for the company from a vendor who is to be paid by the company when formed, and, by a secret arrangement with the vendor, a part of the price, when the agreement is carried out, comes into the hands of the promoter, that is a secret profit which he cannot retain; and if any part of such secret profit consists of paid-up shares of the company issued as part of the purchase-price of the property, such shares may, in winding-up proceedings, be treated, if held by the promoter, as unpaid shares for which the promoter may be made a contributory. See also *Earle v. Burland* (1899), 27 Ont. A. R. 540; *Petrie v. Guelph Lumber*

Co. (1886), 11 S. C. R. 450; Fraser River Mining Co. v. Gallagher, 5 B. C. R. 82.

Those who contract obligations on behalf of a proposed company will be personally liable if the company, after incorporation, repudiates the same: Irwin v. Lesnard (1889), 17 R. L. 589; Atwater v. Importers and Traders Co. (1886), 31 L. C. J. 52; Sandusky Coal Co. v. Walker (1896), 27 Ont. R. 677; Clergue v. Humphrey (1900), 31 S. C. R. 66; Milburn v. Wilson (1901), 31 S. C. R. 481; Hung Man v. Ellis (1895), 3 B. C. R. 486; Highway Advertising Co. v. Ellis (1904), 7 Ont. L. R. 504; Vulcan Iron Works v. Leary, 1 West. L. R. 453; Patterson v. Brown, 6 Ont. W. R. 204.

Section 85. (Liability for wages, etc.). A corresponding section in the Ontario Act was fully discussed in the case of Welch v. Ellis (1895), 22 Ont. A. R. 255. The exhaustive opinion of Osler, J. (p. 258 et seq.), will be found to be helpful to a clear understanding of this section; but it must be borne in mind that the section of the Ontario Act under which this case was decided, did not include the word "clerk" which is found here, and for that reason the case cannot be regarded as a complete authority for the construction of this section. It was there decided, however, that a foreman of certain works who hired and dismissed men, received and paid out money for wages, but did no manual labour, was not a "labourer, servant or apprentice," within the meaning of the Ontario Act. However, this section came under consideration in the case of Fee v. Turner, Q.R. 13 K.B. 435, and it was there held that a person engaged to perform manual work, at a daily wage, and who is actually occupied in doing such work, is a "labourer" within the meaning of the section, although he may be entrusted with the supervision of other workmen, in the capacity of "boss" or foreman. See also Herman v. Wilson (1900), 32 Ont. R. 60; Ellis v. Midland Ry. Co. (1882), 7 Ont. A. R. 464.

Medical examiner for insurance company—Agent—Contract: Laberge v. Equitable Life Assurance Society (1895), 24 S. C. R. 595.

Section 86. See North Sydney Mining, etc., Co. v. Greener, 31 N. S. R. 41.

#### MEETINGS.

Section 87 (General and special). The company can only transact its business by and through the individual members. This is done at the meetings of the company, general or

special, and it is therefore necessary that the legal requisites for the validity of such meetings should be strictly observed. See *Halton v. Montreal, etc., Ry. Co.* (1884), M. L. R. 1 S. C. 69. Meetings are of two kinds, ordinary or general, and extraordinary or special. The former are held periodically at appointed times and for the consideration of matters in general, the latter are called upon emergencies, and are for the transaction of business: *Austin Mining Co. v. Gemmell* (1886), 10 Ont. at p. 706.

**Section 87 (a) Notice:** *McLaren v. Fiske* (1881), 28 Gr. 352; *Marsh v. Huron College* (1880), 27 Gr. 605; *Cannon v. Toronto Corn Exchange* (1880), 5 Ont. A. R. 268; *Portland and Lancaster Steam Ferry Co. v. Pratt*, 2 Allen (N.B.), 17; *Waddell v. Ontario Canning Co.* (1889), 18 Ont. R. 41.

**Section 87 (c) (Majority vote):** *Johnston v. Consumers Gas Co.* (1895), 27 Ont. R. 9; *North-West Transportation Co. v. Beatty* (1887), 12 A. C. 589; *Christopher v. Noxon* (1884), 4 Ont. R. 672; *Waddell v. Ontario Canning Co.* (1889), 18 Ont. R. 41; *Purdom v. Ontario Loan Co.* (1892), 22 Ont. R. 597; *Re Bolt and Iron Co.* (1887), 14 Ont. R. 211.

(Casting vote). **Quorum—Casting vote:** *Toronto Brewing and Malting Co. v. Blake* (1882), 2 Ont. R. 175.

**Section 91 (Inspection of books).** It has been held in England that a provision entitling a shareholder to inspect "books wherein the proceedings of the company are recorded," was not sufficient to entitle him to see the minutes of the proceedings of the directors: *Reg. v. Mariquita* (1858), 1 E. & E. 289.

In *re Bank of Upper Canada v. Baldwin* (1829), Dra. 55, it was held that a stockholder is not entitled as a matter of right, to inspect the stock-book or other books of a bank; nor will the Court grant a mandamus for such inspection unless special grounds are shown. And see *Plamondon v. Blouin*, Q. R. 28 S. C. 149.

#### OFFENCES AND PENALTIES.

**Sections 114 and 115 ("Limited").** Civil liability of director or officer for failure to use word "Limited:" see *Howell Lithographic Company v. Brethour* (1899), 30 Ont. R. 204.

**Section 117 (False entries).** It will be observed that this section does not extend to the case of "false statements" as  
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in s. 153 of the Bank Act. However the provisions of s. 413 of the Criminal Code make any one guilty of an indictable offence who "being a director, manager, public officer or member of any body corporate or public company," with intent to defraud, makes any false entry, etc.: See *The Queen v. Gillespie* (1898), 1 Can. Cr. C. 551. And see note to s. 153 of the Bank Act (A. S. C., 1906, c. 29).

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## PART II.

### COMPANIES CLAUSES.

#### APPLICATION OF PART II.

Section 121, s.-s. 3 ("Business of banking"). It was held in *La Société Permanente de Construction du District d' Ibrville v. Rossiter* (1881), 4 L. N. 268, that a company incorporated under provincial legislation, and with authority to do so, might lend money on a promissory note: But see *Walmsley v. Rent Guarantee Co.* (1881), 29 Gr. 484.

Section 123. See notes to ss. 28-33 (Part I.), *supra*.

Sections 125-131 (Directors' Duties and Powers). See notes to ss. 72, 73, 75, 77, 80, 82, and 85 (Part I.), *supra*.

#### BY-LAWS.

Section 132 (Allotment—Overruling general by-law). Where a by-law is passed at the annual general meeting of a joint stock company, providing for the allotment of certain new stock by the shareholders, the directors have no power at a special meeting to pass a by-law directing its repeal, and providing for the allotment by themselves: *Stephenson v. Vokes* (1896), 27 Ont. R. 691.

(Ultra vires—Unfairness). A by-law or resolution of the directors of a joint stock company which operates unequally towards the interests of any class of the shareholders of the company is invalid, and ultra vires of the company's powers: *North-West Electric Co. v. Walsh* (1898), 29 S. C. R. 33.

(Uncertainty). Where a corporation is empowered by statute to enact by-laws, and to impose a penalty for their infraction, not exceeding a certain amount, a by-law is bad which annexes a penalty to an offence but

does not declare its amount: *Peters v. London Board of Police* (1846), 2 U. C. Q. B. 543.

(Notice of by-laws). As to outsiders dealing with a company being affected by constructive notice of by-laws, see per Killam, J., in *McEdwards v. Ogilvie Milling Co.* (1887), 4 Man. R. at p. 6, where he observes that the plaintiff must be taken to have notice of the Joint Stock Companies Act (Man.), and of the letters patent incorporating the company, as he could become acquainted with the latter by search in the office of the proper department, "but further than that he could not be expected to go." See to the same effect, *Sheppard v. Bonanza* (1894), 25 Ont. R. 305. See also *Thompson v. Brantford Electric Co.* (1898), 25 Ont. A. R. at p. 346; *Merchants Bank v. Hancock* (1884), 6 Ont. R. 285; *McDougall v. Lindsay Paper Mill Co.* (1884), 10 Ont. P. R. 247.

(By-law to increase stock). See *Page v. Austin*, 10 S. C. R. 132.

(Calls). See *Union Fire Ins. Co. v. O'Gara* (1883), 4 Ont. R. 359.

Section 135 (Sanction of shareholders). See *Knight v. Whitfield*, 22 C. L. J. 15.

#### CAPITAL STOCK AND CALLS.

Sections 138-143. See notes to ss. 45, 46, 58, 59, 62, 64, and 67 (Part I.), *supra*.

#### OFFENCES AND PENALTIES.

Section 148. See notes to s. 117 (Part I.), *supra*.

#### SHAREHOLDERS' LIABILITY.

Sections 150-152. See notes to 38, 39, 40 and 41 (Part I.), *supra*.

#### MEETINGS AND VOTING.

Sections 153-157. See notes to s. 87 (Part I.), *supra*.

#### PREFERENCE STOCK.

Sections 158-159. See notes to s. 47 (Part I.), *supra*.

#### CONTRACTS.

Section 160. See notes to ss. 28-30, 69, 80, 82 and 85 (Part I.), *supra*.

## TRUSTS.

Section 161. See notes to s. 50, s.-s. 2 (Part I.), *supra*.

## LIABILITY OF DIRECTORS.

Section 162. (Company insolvent). When company is to be deemed insolvent: See *Re Rapid City, etc., Farmer's Elevator Co.* (1894), 9 Man. R. 571; *Re Briton Medical Association* (1886), 11 Ont. R. 478. And see the *Winding-up Act*, R. S. C., 1906, c. 144.

Assignment for creditors: see *Hovey v. Whiting*, 14 S. C. R. 515.

Section 165 ("Limited"). See *Howell Lithographic Co. v. Brethour* (1899), 30 Ont. R. 204.

Section 167 (Loan to shareholder). See *Comer v. Thompson*, 4 U. C. Q. B. (O.S.) 256, where it was held that a member of a joint stock company, not incorporated, lending with the assent of the company out of the joint fund to another member, and taking from him a promissory note payable to himself individually for repayment, can recover on the note.

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 PART III.

## LOAN COMPANIES.

## LETTERS PATENT.

Section 182 (Annulling—Quebec law). See *Banque d'Hochelaga v. Murray* (1890), 15 A. C. 414.

## NAME OF COMPANY.

Section 186 (Change of name). See *Hughes v. Mutual Fire Ins. Co. of Newcastle*, 9 U. C. Q. B. 387; *Rolph v. Cahoon*, 2 Gr. 623; *Provincial Ins. Co. v. Cameron*, 31 U. C. C. F. 523.

## ORGANIZATION OF COMPANY.

Section 190 (Inchoate company). In case of a nominal corporation which has no legal status as such, the ostensible corporators are partners; and their liability as partners on the contracts of the company is a joint, and not a joint and several, liability: *Gildersleeve v. Balfour*, 15 Ont. P. R. 293.

## POWERS AND LIABILITIES.

Section 192 (Business). See *Re Farmers' Loan and Savings Company, Debenture Holders' Case*, 30 Ont. R. 337; *Rex v. Pierce*, 9 Ont. L. R. 374.

Sections 196-197 (Assets of another company—Liability for). See note to s. 232, *infra*.

Section 198 (Bills and Notes). This express disability as to lending money on bills and notes makes *La Société Permanente de Construction du District d'Iberville v. Rossiter* (1881), 4 L. N. 268, inapplicable. See note to s. 121, s.-s. 3 (Part II.), *supra*.

## LOANS AND DEPOSITS.

Section 203 (Note as collateral). See *Freehold Loan and Savings Co. v. Farrell*, 31 U. C. C. P. 453.

(Bond as collateral). See *Hope v. Glass*, 23 U. C. Q. B. 86.

## REAL ESTATE.

Section 209 (Mortmain). "Building societies . . . possess only the powers specially conferred upon them by their charter or Act of incorporation, and those that are necessary to attain the object of their creation; and they are subject to the disabilities arising from the law and comprised in the general laws of the country respecting mortmains and bodies corporate, prohibiting them from acquiring immovable property except for certain purposes only:" per *Ritchie, C.J.*, in *Compagnie de Villas du Cap Gibraltar v. Hughes* (1884), 11 S. C. R. at p. 541.

The provisions of this and the two following sections would appear to be in excess of federal legislative power. Certainly they invade the domain of "property and civil rights" in the provinces, and cannot be justified by any application of the federal "paramount right" principle: See *Citizens Insurance Co. v. Parsons*, 7 A. C. 96; *Colonial Building Assn. v. Attorney-General of Quebec*, 9 A. C. at p. 166. But the court in *McDiarmid v. Hughes* (1888), 16 Ont. R. 570, seemed to think that the Dominion had ample power to enact such legislation.

## DEBENTURES.

Section 212. See notes to s. 69 (Part I.), *supra*.

## TRANSFERS.

Section 214 (Transmission in case of death, etc.). See note to s. 47 (a) of the Bank Act (R. S. C., 1906, c. 29), ante.

## EXECUTION OF TRUSTS.

Section 217 (Company not liable). See note to s. 50, s.-s. 2 (Part I.), supra. See also notes to s. 52 of the Banking Act, R. S. C., 1906, vol. 1, c. 29.

## BY-LAWS.

Sections 218-220. See notes to s. 132 (Part II.), supra.

Section 221 (Exterritoriality). As to power of Parliament to pass extritorial legislation, see per Lord Atkinson in *Attorney-General of Canada v. Cain* (1906), A. C. 542.

Section 231 (Preference stock). See notes to s. 47 (Part I.), supra.

## AMALGAMATION AND PURCHASE.

Section 232 (Liability). A statute authorized two companies to unite into one company by either a complete or partial union; and either of joint or separate, or absolute or limited liabilities to third parties. The companies agreed to an absolute union, and made no provision for limiting the liability of the new company in respect of past transactions of the old companies. Held, that the new company thereby assumed all the liabilities of the old companies to third persons: *Cayley v. Peterborough and Marmora Ry., etc., Co.*, 14 Gr. 571.

Section 233. See *Lennon v. Empire Loan, etc., Co.*, 12 Ont. L. R. 560.

## RIGHTS OF CREDITORS.

Section 253 (Recourse by creditors). Shareholders in a loan company, in answer to a proposal from the company, paid, toward the reserve fund, dividends paid to them by the company and various other sums of money, with a view to increase the reserve fund to the same amount as the paid up stock. In winding-up proceedings, Held, that such shareholders were not entitled to rank as creditors upon the assets of the company with the other creditors, depositors and debenture holders, and that any claim

they had against the company and its reserve fund was subject to the payment of the debts of the company: *Re Atlas Loan Co.: Claims on Reserve Fund (1905)*, 9 Ont. L. R. 468.

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PART IV.

BRITISH LOAN COMPANY.

POWERS OF COMPANY.

Sections 263-264 (Real estate). As to constitutionality of provisions as to holding real estate in the provinces, see notes to s. 209 (Part III.), *supra*.

(Personal estate). See *Commercial National Bank of Chicago v. Corcoran*, 6 Ont. R. 527.

(Promissory notes). See *Howe Machine Co. v. Walker*, 35 U. C. Q. B. 37.

And see generally as to rights of foreign corporations in Canada: *Chaudière Gold Mining Co. v. Desbarats*, L. R. 5 P. C. 277; *Canadian Pacific Ry. Co. v. Western Union Telegraph Co.*, 17 S.C.R. 151; *Kavanagh v. Norwich Union, etc., Ins. Co.*, 4 Que. P. R. 229; *Great Northern Ry. Co. of Canada v. Furness, Withy & Co.*, 6 Que. P. R. 404.

Winding-up in foreign court—Effect of. See *Douglas v. Atlantic Mut. Life Ins. Co.*, 25 Gr. 379.

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PART V.

BRITISH AND FOREIGN MINING COMPANIES.

Section 269. Foreign company—Agents. See *Chaudière Gold Mining Co. v. Desbarats*, L. R. 5 P. C. 277; *Campbell v. National Life Ins. Co.*, 24 U. C. C. P. 133. And see note to ss. 263, 264 *supra*.

Bond to foreign corporation. See *Washington County Mutual Insurance Co. v. Henderson*, 6 U. C. C. P. 146.

General contracts with foreign corporations. See *Canadian Pacific Railway Co. v. Western Union Telegraph Co.*, 17 S. C. R. 151.

Proceedings against foreign corporations—*Lex fori*  
—*Lex loci*. See *Plummer v. Lake Superior Native Cop-*  
*per Co.*, 10 Ont. P. R. 527; *Clarke v. Union Fire Ins.*  
*Co.*, 10 Ont. P. R. 313.

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PART VI.

Section 274 (Debentures). See notes to s. 69 (Part I.), *supra*.

And for Insolvency Cases respecting Companies  
in general, see Winding-up Act (R. S. C., 1906, c. 144)  
*post*.

# ANNOTATIONS.

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## CHAPTER 81.

### The Indian Act.

- Section 19. Reserves—Indian lands—Animals running at large: *Atkinson v. Plimpton*, 6 O. R. 573.
- Section 25. Descent of property—Power to make a will: *The Stratford Gas Co. v. City of Stratford*, 26 O. R. 109.
- Section 33. Trespassing on reserves: *Regina v. Hagar*, 7 C. P. 380; *Little v. Keating*, 6 O. S. 265.
- Sections 52-55. Sale of Indian lands—Assignment: *Bridge v. Johnston*, 6 O. L. R. 370.
- Section 73 et seq. Timber lands: *Vanvleck v. Stewart*, 19 U. C. R. 489.  
Timber—Larceny: *Regina v. Fearman*, 10 O. R. 660; *Regina v. Johnson*, 8 C. L. T. 334.
- Section 122. Liability for debts after enfranchisement, 32 & 33 Vict. c. 6, s. 16: *McKinnon v. Van Every*, 5 P. R. (Ont.) 284; *Bryce v. Salt*, 11 P. R. 112.  
Right to vote: *Regina v. Shavelear*, 11 O. R. 727; *Re Metcalfe*, 17 O. R. 357.  
Right to hold municipal office: *Regina v. White*, 5 P. R. (Ont.) 315.
- Section 127. Cutting hay on reserves: *Regina v. Good*, 17 O. R. 725.
- Section 128. Indian selling wood cut on reserve: *Fegan v. McLean*, 29 U. C. R. 202.
- Section 161. Indian Superintendent a Justice of Peace: *Hunter v. Gilkison*, 7 O. R. 735.



# ANNOTATIONS.

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## CHAPTER 85.

### Inspection and Sale Act.

**Part VIII.** These provisions are intra vires of the Dominion  
Parliament: *Regina v. Stone*, 23 O. R. 221.

# ANNOTATIONS.

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## CHAPTER 97.

### The Alien Labour Act.

Section 4. Consent of judge—What to contain: *Rex v. Breckenridge*, 10 O. L. R. 459.

*Qui tam* action in Quebec — Security for costs: *Laurin v. Raymond*, 7 Que. P. R. 209.

Section 10. Deportation of alien—Held *intra vires*: *Attorney-General of Canada v. Cain* (1906) A. C. 543.

# ANNOTATIONS.

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## CHAPTER 99.

### Manitoba Supplementary Provisions Act.

**Section 3. Swamp lands—Transfer of proprietary rights—Vesting at future date.**

It is a general principle that where the revenues of Crown lands are transferred by statute from one government to another there is no transfer of title. That remains all the time in the Crown. What is transferred is the right to administer such lands and the right to appropriate the revenues therefrom; and the latter right will in general co-exist with the former: See *Attorney-General of Manitoba v. Attorney-General of Canada* (1903), 8 Ex. C. R. 337.

# ANNOTATIONS.

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## CHAPTER 108.

### Public Ferries Act.

**Section 3. Licenses**—Language deemed sufficient for grant: *Anderson v. Jellet*, 9 Can. S. C. R. 1.

Who may sign grant: *Jones v. Fraser*, 6 O. S. 426.

International ferries and interprovincial ferries: *Regina v. Davenport*, 16 U. C. R. 411; *Smith v. Ratte*, 15 Gr. 473.

In re International and Interprovincial Ferries: 36 Can. S. C. R. 206.

Liability for negligence: *St. John v. Macdonald*, 14 Can. S. C. R. 1.

Taxation: *Longueil Navigation Co. v. Montreal*, 15 Can. S. C. R. 566.

North-west Territories: *Dinner v. Humberstone*, 26 Can. S. C. R. 252.

Sub-lease: *Higgins v. Hogan*, 7 U. C. R. 401.

Private rights within the ferry limits: *Ives v. Calvin*, 3 U. C. R. 464.

**Section 10. Disturbance**—It is not necessary in the action to prove that defendant received or claimed hire or payment: *Burford v. Oliver*, *Dra.* 9; *Hickley v. Gildersleeve*, 10 C. P. 460.

# ANNOTATIONS.

## CHAPTER 110.

### Land Titles Act.

For cases in Australasia relating to the Torrens Act, vide *The Torrens Australasian Digest*.

**Section 55.** Application to bring land under Act—Reference to Judge: *In re Land Titles Act and Lillis*, 4 N. W. T. Rep. 300.

**Section 62.** Evidence before Judge: *Re G.*, 21 O. R. 109.

**Section 67.** Certificate of Title: *Re Rivers*, 1 N. W. T. Rep. 464.

**Section 69.** Implied covenant in transfer: *Glenn v. Scott*, 2 N. W. T. Rep. 339.

**Sections 70 and 71.** Transfer of lands—Unregistered: *Wilkie v. Jellett*, 2 N. W. T. Rep. 133.

**Section 73.** Reservations—Easement: *James v. Stevenson* (1893), A. C. 162.

**Section 78.** Transfer of title: *Re Bentley & Morris*, 1 N. W. T. Rep. 473; *In re Kattleson*, 17 C. L. T. 317.

**Section 114.** Transmission of interest: *Re Bannerman*, 2 M. R. 377; *Re Lewis*, 5 M. R. 44.

**Section 124.** Executions: *Re Claxton*, 1 N.W.T. Rep. 282; *Re Town of Prince Albert*, 4 N. W. T. Rep. 510; *In re Land Titles Act, 1894*, and *Blanchard Estate*, 5 N. W. T. Rep. 240; *Registrar of Titles v. Paterson*, 2 App. Cas. 110.

**Section 130.** Tax Sales: *In re Prince Albert Tax Sales*: 4 N. W. T. Rep. 198; *Re Donnelly Tax Sales*, 5 N.W.T. Rep. 270; *Kirk v. Kirkland*, 7 B. C. R. 12; *North British Canadian Investment Co. v. St. John School Trustees*, 35 Can. S. C. R. 461.

**Section 131.** Caveats: *McArthur v. Glass*, 6 M. R. 224; *McKay v. Nanton*, 7 M. R. 250; *Jones v. Simpson*, 8 M. R. 124; *Martin v. Morden*, 9 M. R. 565; *Frost v. Driver*, 10 M.

R. 209; *Adams v. Hockin*, 12 M. R. 11; *North of Scotland Mortgage Co. v. Thompson*, 13 M. R. 95; *Leng v. Smith*, 14 M. R. 258; *Iredale v. McIntyre*, 14 M. R. 199; *Alloway v. St. Andrews*, 15 M. R. 188; *Re Clagstone & Hammond*, 28 O. R. 409; *Re MacDonald & Sullivan*, 14 P. R. (Ont.), 60; *Manning v. Commissioner of Titles*, 15 App. Cas. 195.

Section 135. Discharge of Caveat—Costs: *Re Ross & Stobie*, 14 P. R. (Ont.) 241.

Section 136. Proceedings on caveat: *Clarke v. Scott*, 5 M. R. 281; *Lavalle v. Drummond*, 6 M. R. 120; *Morice v. Baird*, 6 M. R. 241; *McArthur v. Glass*, 6 M. R. 301; *Grant v. Hunter*, 6 M. R. 550; *Downs v. Campbell*, 7 M. R. 34; *Sprague v. Graham*, 7 M. R. 398; *Hay v. Nixon*, 7 M. R. 579; *Ruddell v. Georgeson*, 8 M. R. 134; *Grant v. Hunter* 8 M. R. 220; *Schultz v. Frank*, 8 M. R. 345; *Graham v. Hamilton*, 8 M. R. 443; *Graham v. Hamilton*, 8 M. R. 459; *Howell v. Montgomery*, 8 M. R. 499; *Martin v. Morden*, 9 M. R. 567; *Bucknam v. Stewart*, 11 M. R. 491.

Section 146. Mistake of Registrar: *Morris v. Bentley*, 2 N. W. T. Rep. 253; *Wilson v. District Registrar of Winnipeg*, 9 M. R. 215.

Section 152. Costs: *Re Craig & Leslie*, 18 P. R. (Ont.) 270.

Section 153. Reference to Judge: *Re Rivers*, 1 N. W. T. Rep. 464; *In re Land Titles Act, 1894, and the C. P. R.*, 4 N. W. T. Rep. 227.

Section 154. Error or fraud in certificate: *Fawkes v. Attorney-General of Ontario*, 6 O. L. R. 490; *In re Angus*, 17 C. L. T. 386.

Section 156. Cancellation of certificate: *Moore v. Confederation Life*, 9 M. R. 453; *In re Buchanan*, 12 M. R. 612.

Section 157. Assurance Fund: *In re Calgary and Edmonton Rly. Co.*, 17 C. L. T. 353.

Section 167. Notice of lis pendens: *Syndicat Lyonnais du Klondike v. McGrade*, 36 Can. S. C. R. 251.

Section 174. Certificate to be conclusive evidence as to Title: *The Hudson's Bay Co. v. Kearns*, 3 B. C. R. 330; *Herbert v. Gibson*, 6 M. R. 191; *Re Massey & Gibson*, 7 M. R. 172.

Section 174. Certificate does not cover a forged transfer: *Gibbs v. Messer* (1891), A. C. 248.

# ANNOTATIONS.

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## CHAPTER 113.

### Shipping Act.

#### REGISTRATION.

**Section 45 (Mortgagee not owner).** Holder of hypothec on ship may dispose of it as absolutely as if he were owner. Sale of mortgaged ship without consent of mortgagee, even under authority of court, has no effect as against him—Presence, and even bidding, at sale not acquiescence: *In re Robert*, Q. R. 18 S. C. 101.

#### SEAMEN.

**Section 126, s.-s. d. (Definition).** See *Swinehammer v. Sawler*, 27 N. S. 448; *Mercier v. Mercier*, Q. R. 14 S. C. 383, and notes to s. 326.

**Section 174 (Discharge).** Master not liable to criminal proceedings for wrongfully refusing to pay and discharge seaman: *Rex v. Meikle*, 36 N. S. 297.

Seaman who shipped for voyage but is injured on service and left at intermediate port, entitled to wages for whole voyage: *Ralston v. Barss*, 1 *Thomp.* (N. S.) 2nd ed., 75.

Expenses for surgical aid and maintenance furnished by master, cannot be set off against wages: *Qu.* Is master bound to furnish same: *Ib.*

**Section 187 (Suit for wages).** Complaint must show all facts and circumstances giving the court jurisdiction. It cannot be established by evidence: *Ex parte Andrews*, 34 N. B. 315.

**Section 191 (Wages).** Arrest of ship on telegram—Ship proceeding on voyage — Contempt of Court: *In re The 'Ishpeming'*, 8 *Ex. C.* 379.

Where claimants against fund in court are of equal degree, the diligent creditor will have priority. Where one claiming subsequently to another has a legal prior-

ity, it will be protected if his claim is made before decree for distribution. In this case seamen suing first were paid in full: *Mussen v. The "Comrade,"* 7 Ex. C. 330 (McLeod, J.)

An "A. B." who is disrated is entitled to wages of "A. B." up to the time of disrating: *Fratton v. Andrews*, 17 C. L. T. Occ. N. 19.

Special contract for wages cannot be enforced in court of Vice-Admiralty: *The "City of Petersburg,"* Young Adm. 1; 1 Old. 814.

Section 192 (Wrong forum). Master's claim for over \$300, but only \$34 proved, accounts being in bad shape—No costs allowed. *The "Ann,"* Young Adm. 104.

Section 193 (Discharge). Misconduct of master—A blow on the face accompanied by very abusive language not such ill-usage as entitles seaman to wages without a discharge: *Ex parte Lowery*, 32 N. B. 76.

Section 194 (Master's wages). In action for, owners by cross demand claimed damages for injury to ship by violation of written instructions. As such damages exceeded master's claim his action was dismissed: *Sylvain v. Canadian Forwarding and Export Co.*, Q. R. 10 S. C. 195, reversing 7 S. C. 256.

Section 208 (Leaving seaman abroad). Expenses charge on ship—Procedure under similar clause in *Merchants Shipping Act, 1854*: *The Queen v. S. S. Troop Co.*, 29 S. C. 662.

Sections 210-214 (Health, etc.). Ship owner under no duty at common law or under s. 207, *Merchants Shipping Act, 1894*, to provide surgical or medical attendance for crew: *Morgan v. British Yukon Nav. Co.*, 10 B. C. 112.

Section 236 (Attachment of wages). Second officer of ship is a "seaman" under this section, and his wages cannot be attached. He may assign his claim and still receive payment: *Mercier v. Mercier*, Q. R. 14 S. C. 383.

A hand who ships for fishing voyage agreeing to accept share of the portion of catch to be divided among the crew is a "seaman," and the sum coming to him is "wages" and exempt from attachment: *Swinehammer v. Sawler*, 27 N. S. 448.

But he has not all the liens and remedies a seaman has for wages: *Ib.*, per *Graham, J.*



Section 302 (Harbouring deserters). Section not *ultra vires*—Conviction of resident of Canada, on information of another resident, for harbouring deserters shipped on foreign vessel in Canadian port is good—Consent of consular officer under s. 325 not necessary: *The King v. Martin*, 36 N. B. 448.

If offence committed in Canada by a resident and ship not proved to be a British ship, procedure is under Seamen's Act of Canada: *The Queen v. O'Dea*, Q. R. 9 Q. B. 158.

Appeal from summary conviction: *Ib.*

Harbouring deserters from foreign ship—Conviction should show on face of proceedings either consent of both parties or written consent of foreign counsel, as provided in s. 325, for judge or magistrate to proceed—Affidavit showing such consent will not be received in opposing proceedings to quash: *Reg. v. Blair*, 24 N. B. 245.

Section 325 (Procedure). Harbouring deserters from foreign vessel—Consent of parties or consul: *Reg. v. Blair*, 24 N. B. 245.

#### INLAND WATERS.

Section 326 (Interpretation). "Seaman" includes person engaged by owner to take charge of confectionery stand on his ship: *Connor v. The Flora*, 6 Ex. C. 131 (*McDougall, L.J.*).

But not the caretaker of a ship not in commission: *Brown v. The Flora*, 6 Ex. C. 133 (*McDougall, L.J.*).

Section 348 (Seaman's wages). The Admiralty Act, 1891, conferred on Exchequer Court all jurisdiction possessed by High Court, Admiralty Division, in England on 25th July, 1890. Therefore an Admiralty Court in Canada could try a claim for wages, though for less than \$200, notwithstanding R. S. C. c. 75, s. 34. The ship *W. J. Aikens*, 4 Ex. C. 7 (*McDougall, L.J.*). In *Gagnon v. S. S. Savoy*, 9 Ex. C. 238, *Routhier, J.*, refused to follow this decision, and held that the court had no jurisdiction.

Supreme Court of North-West Territories has concurrent jurisdiction with Exchequer Court in Admiralty matters: *Kelly v. Alaska Mining and Trading Co.*, 4 Terr. L. R. 18.

Every hand or employee has lien on ship for wages for season not exceeding six months: *Goulet v. Dansereau*, Q. R. 12 S. C. 15.

Section 350 (Master's wages). Master entitled to lien on ship for wages, and for proper disbursements made when he could not efficiently communicate with owner, including those not paid: *Symes v. "City of Windsor,"* 4 Ex. C. 362; *Third National Bank of Detroit v. Symes,* 4 Ex. C. 400.

Master's lien has priority over a mortgage. *Ib.*: *Sylvester v. The "Gordon Gauthier,"* 4 Ex. C. 354.

The lien cannot be assigned: *Rankin v. The "Eliza Fisher,"* 4 Ex. C. 461.

Master's lien for wages covers season not exceeding six months: *Goulet v. Dansereau,* Q. R. 12 S. C. 15.

#### PILOTAGE.

Section 433 (Licensing pilots). Quebec Harbour Commission (now Minister of Marine) appoints pilots and fixes number of apprentices — Pilots' association chooses apprentices, whose indentures bind them to the association, which sees that they are instructed: *Raymond v. Langlois,* Q. R. 22 S. C. 392.

Law respecting pilots and pilotage is of public order — Custom of Quebec pilot on taking turn of duty to recommend apprentice from whom he demands remuneration is unlawful and opposed to public order: *Ib.*

Section 477 (Exempted ships). A vessel in charge of a tow-boat, with no motive power of its own, is exempt from compulsory pilotage—*Corporation of Pilots v. The Grandee,* 8 Ex. C. 54 (*Routhier, L.J.*). Affirmed by Exchequer Court Judge, 8 Ex. C. 79.

And coal barges towed from Nova Scotia to New Brunswick, though capable under favourable conditions of sailing alone: *St. John Pilot Commissioners v. Cumberland Coal Co.,* 38 S. C. 169, affirming 37 N. B. 406.

But not a ship employed on sealing voyage from Halifax to Newfoundland seal fisheries and back, calling on outward voyage at Louisburg for coal, and at Newfoundland port for men and supplies, and at Newfoundland on return to dispose of catch: *Farquhar v. McAlpine,* 35 N. S. 478.

A derelict towed into port for sake of her cargo and to be broken up is not a ship: *Halifax Pilot Commissioner v. Farquhar,* 26 N. S. 333 (*Johnstone, Co. C. J.*)

If a ship exempt from pilotage dues employs a pilot, the latter is entitled to the fees fixed by tariff: *Bogue v. Pilots' Association,* 9 Q. L. R. 113.

A ship exempt is liable for such dues if she signals for a pilot and then refuses his services: *Pilots' Association v. The "Horsey,"* 10 Q. L. R. 257. See s. 480.

**Section 526 (Investigations, Montreal).** On conviction of pilot by Harbour Commissioners, certiorari may issue: *Arcand v. Harbour Commissioners of Montreal*, Q. R. 17 S. C. 497.

If pilot is suspended and surrenders his commission, he cannot question the judgment by certiorari: *Frenette v. Montreal Pilots' Court*, 5 Que. P. R. 415. And see *Perrault v. Montreal Harbour Commissioners*, Q. R. 17 S. C. 501.

#### SALVAGE.

**Section 757 (Saving life).** Where one set of sailors took off crew of vessel and another brought her into port, both were awarded salvage: *The "Heindall,"* Young, V.-A., 132.

Salvage to fisherman for saving lives from passenger steamer wrecked on coast: *The "Atlantic,"* Young, V.-A., 170.

**Section 759 (Of ship).** Of hull—By mail steamer—Delay—*Pickford & Black S. S. Co. v. Schr. Foster Rice*, 9 Ex. C. 6.

Basis of valuation—No market value—Res valued as a "going concern:" *Vermont S. S. Co. v. The Abby Palmer*, 8 Ex. C. 446. Expenses of towing ship to port may be recovered as well as moiety of value: *Jacobsen v. The "Archer,"* 3 B. C. 374.

Where a yacht with no one on board broke loose from anchorage in a public harbour during a storm and was saved by men who boarded her when in a position of danger, the rescuers were entitled to salvage: *Lahey v. The Yacht Maple Leaf*, 6 Ex. C. 173 (*McLeod, J.*). See *The "Silver Bell,"* Young, Adm. 43.

A steamship in ordinary channel of navigation in fine weather and calm sea had her fires extinguished, owing to accident to boiler, and was towed by another for 30 hours and into Quebec. As the service rendered was under the easiest conditions and involved no delay or increase of labour, it was held to be a case of towage, not salvage: *Hine v. The Thomas J. Scully*, 6 Ex. C. 318 (*Routhier, J.*).

Agreement for salvage between master of stranded ship and master of tug *prima facie* valid.—Onus on defendant to show price was exorbitant or promise to pay unfairly extorted: *Connolly v. The Dracona*, 5 Ex. C. 146 (*Routhier, J.*), affirmed by Exchequer Court, 5 Ex.

C. 207. See *Couette v. The Queen*, 3 Ex. C. 82; *Stockwell v. Cargo of S. S. "Brooklyn,"* 12 Q. L. R. 323; 9 L. N. 322; *Kaine v. "The Ismir,"* 14 Q. L. R. 353.

Ship was stranded with point of rock protruding through hull. Blasting rock to free her not salvage service: *The "Costa Rica,"* 3 Ex. C. 23 (Begbie, C.J.).

Where abandoned ship was purchased, towage on bringing her to shipwright for repairs a salvage service. Also use of anchor, chains, etc., used in saving her. But personal services not performed on vessel were not, nor services of tug in unsuccessful attempt to get her off: *The "Gleniffer,"* 3 Ex. C. 57 (McDougall, L.J.).

There being no exceptional features, only a moiety of value of res was awarded to salvors: *Ib.* And see *The "Carmona,"* 9 Q. L. R. 286.

Where two vessels in collision are both in fault, and one renders salvage services to the other, the latter should only be required to pay half the value of such services: *The "Zambesi"* and *The "Fanny Dutard:"* 3 Ex. C. 67 (Begbie, C.J.).

Where ship was taken from dangerous position and towed to open sea, from whence she reached port, the service was salvage, not towage: *Can. Pac. Nav. Co. v. The "C. F. Sargent,"* 3 Ex. C. 332 (Begbie, C.J.). And see *The "Herman Ludwig,"* Young, V.-A., 211. And see *The "Royal William,"* 1 Stu. V.-A., 107.

Derelict schooner in helpless position and captain of another vessel persuaded crew to abandon her. He afterwards returned and towed her into port. Held, schooner not a derelict and less than half of amount claimed was awarded: *The "Margaret,"* Young, V.-A., 171.

And vessel abandoned by crew for shifting of cargo in heavy weather, though she was not unmanageable, and abandonment not justified, not a derelict, and only small sum awarded: *The "Charles Forbes,"* Young, V.-A., 172.

Master of salving vessel forfeited his share by misconduct: *Ib.* And see *The "Rowena,"* Young, V.-A., 255.

As to salvage in case of derelict, see *The "Tickler:"* Young, V.-A., 166; *The "Sylph,"* 2 C. L. T. Occ. N. 607; *The "Scotswood,"* Young, V.-A., 25; *The "Progress,"* 9 Q. L. R. 156; *The "Marie Victoria,"* 2 Stu. V.-A., 109.

Decree awarding salvage re-opened and amount reduced on discovery of error in appraisalment: *The "Royal Arch,"* Young, V.-A., 260.

Steamer towing vessel not bound to rescue her from unforeseen danger without extra payment for salvage services: *The "St. Hilaire,"* 12 Q. L. R. 70.

Pilot entitled to salvage: *Russell v. Parke*, 8 L. C. R. 229. Seamen entitled when service in excess of duty: *The "Robert and Anne,"* 1 Stu. V.-A., 253; *The "Isabella,"* 1 Stu. V.-A., 281.

Award to salvors proportioned to value of ship, cargo and freight: *The "Sylphide,"* Young Adm. 137; *The "Auguste Andre,"* Young Adm. 201; *The "Canterbury,"* Young, 57; *The "W. G. Putnam,"* Young, 271; *The "R. Robinson,"* Young, 168; *The "Afton,"* Young, 136; *The "Victory,"* 9 Q. L. R. 194.

Section 761 (Jurisdiction). Section does not apply where claim to salvage is disputed: *Lahey v. The Yacht Maple Leaf*, 6 Ex. C. 173 (*McLeod, J.*).

Section 763 (Forum). Petition of right does not lie for salvage services to steamship belonging to Dominion Government: *Couette v. The Queen*, 3 Ex. C. 82 (*Burbidge, J.*).

Money paid into court for release of ship owned by foreign resident will be retained pending appeal to increase salvage award: *Vermont S. S. Co. v. The "Abby Palmer,"* 10 B. C. 383; 8 Ex. C. 462.

Arrest of ship for extravagant claim discouraged: *Ib.*

Section 769 (Valuation). Assessors will be appointed where necessary: *Vermont S. S. Co. v. The "Abby Palmer,"* 10 B. C. 380; 8 Ex. C. 469.

#### NAVIGATION OF CANADIAN WATERS.

Section 913 (Regulations). Regulations for Great Lakes and Upper St. Lawrence adopted by order in council of 20th April, 1905, amended 18th May, 1906. Rules in force in all other Canadian waters were issued by the Department of Marine and Fisheries in 1906.

The non-observance, by the vessel struck, of the rule that steamships shall slacken speed or reverse or stop on approaching another vessel, so as to involve risk of collision (*R. S. C. c. 79, s. 2, Art. 18*) is not to be considered as a fact contributing to the collision if it could have been avoided by the impinging vessel by reasonable care exerted up to the time it occurred: *The "Cuba" v. McMillan*, 26 S. C. 651, affirming 5 Ex. C. 135. See *Hamburg Packet Co. v. Derochers*, 8 Ex. C. 263.

Excusable manœuvres executed in "agony of collision," brought about by another vessel, cannot be imputed as contributory negligence on the part of the vessel collided with, though they contravene the statutory rules: *Ib.*

The rule that in narrow channels steamships shall, when safe and practicable, keep to the starboard (Art. 25 of each of above rules, 1905-6), does not override the general rules of navigation: *Ib.*

Violation of rules that steam vessel hearing fog signal of vessel shall stop engines and navigate with caution (Rule 16): *S. S. Pawnee v. Roberts*, 32 S. C. 509, affirming 7 Ex. C. 390.

Rules of the road must be strictly observed. If violated by both vessels, they are equally liable: *Canadian Lake and Ocean Nav. Co. v. Ship Dorothy*, 10 Ex. C. 163 (*Hodgins, L.J.*).

Departure from rules of navigation by one vessel no excuse for like departure by the other: *Ib.* *S. S. Cape Breton v. Richelieu and Ont. Nav. Co.*, 36 S. C. 564.

Where wrong steering by one ship makes collision inevitable, absence of signal required by local regulation to be given by the other, not contributing to the accident, does not relieve former from full liability: *Tucker v. Ship Tecumseh*, 10 Ex. C. 149 (Ex. C.).

Channel 800 feet wide in Detroit River is a "narrow channel" under rule 25: *Tucker v. The "Tecumseh"*, 10 Ex. C. 44 (*Hodgins, L.J.*). Halifax harbour is not: *S. S. "Arranmore" v. Rudolph*, 38 S. C. 176.

Inner harbour of Boston, Mass., not a "narrow channel" under the corresponding rule in United States: *Ship Calvin Austin v. Lovitt*, 35 B. C. 616.

See "The Tecumseh," 10 Ex. C. 44, as to steamers meeting end on, descending steamers having right of way, and rule as to slackening speed, reversing or stopping when approaching another vessel.

Neglect to keep proper lookout (Art. 29): *St. Clair Nav. Co. v. Ship D. C. Whitney*, 10 Ex. C. 1 at p. 15 (*Hodgins, L.J.*): *Lohnes v. S. S. "Barcelona"*, 10 Q. L. R. 305.

Lookout man must devote himself solely to that duty: *Cadwell v. The "Bielman"*, 10 Ex. C. 155.

Pilot in charge, or man at wheel, not proper lookout: *S. S. Cape Breton v. Richelieu and Ont. Nav. Co.*, 36 S. C. 564, affirming 9 Ex. C. 67. Affirmed by P. C. 19th Dec., 1906.

Crossing ship—Signals—R. S. C. c. 79, s. 2, Art. 19—Art. 28 of present rules: *Owners of S. S. Albano v. The Parisian*, 37 S. C. 284.

Art. 4 of the present regulations provides that "a vessel which from any accident is not under command" shall carry certain lights. Held, that a vessel hove to with her helm lashed is not within such designation; and not obliged to carry the lights mentioned: The "*Birgittie*" v. Forward, 9 Ex. C. 339.

Art. 24. Every vessel overtaking another shall keep out of its way: *Smith v. "Empress of Japan,"* 7 Ex. C. 143; 8 B. C. 122 (Martin, L.J.); *Inchmaree SS. Co. v. The "Astrid,"* 6 Ex. C. 178 (McDonald, C.J.L.J.); *Brine v. The "Tiber,"* 6 Ex. C. 402 (Sullivan, C.J.L.J.).

Vessel at anchor exhibiting lights equal in power to those prescribed compliance with rule: The "*General Birch*," 6 Q. L. R. 300.

A ship made fast to a wharf in harbour is not called upon to exhibit the lights or give the fog signals required by a vessel at anchor or under way: *Bank Shipping Co. v. The "City of Seattle,"* 10 B. C. 513.

By Art. 25 (b) "in narrow channels where there is a current, and in the rivers *St. Mary, St. Clair*, . . . when two steamers are meeting the descending steamer shall have the right of way and shall, before the vessels have arrived within the distance of half a mile of each other, give the signal necessary to indicate which side she intends to take." Under Rule 24 of the "*White law*" governing navigation in United States waters, which is identical with the above, that the rule does not apply to the general course of vessels navigating said waters, but only to meeting vessels: *Davidson v. Georgian Bay Nav. Co.*, 33 S. C. 1.

Vessel not in fault for following local custom—Agony of collision: *Ib.* reversing 8 Ex. C. 1.

# ANNOTATIONS.

## CHAPTER 118.

### Bills of Lading Act.

Section 2 (Consignor or indorsee). Similar provisions in Provincial Act *intra vires*: *Beard v. Steele*, 34 U. C. Q. B. 43. See *Hately v. Merchants Despatch Co.*, 2 O. R. 385.

Assignee—Delivery of goods by assignor—Trover: *Stewart v. People's National Bank of Charlestown, S. C.*, Dig. 202, affirming 19 N. B. 268; *Busby v. Winchester*, 16 S. C. 336, affirming 27 N. B. 231.

Indorsement to bank—Possession of goods: In re *Central Bank*, 21 O. R. 515. Sale by bank with concurrence of assignor: *Peuchen v. Imperial Bank*, 20 O. R. 325. Re-indorsement to shippers: *Mason v. G. W. Ry. Co.*, 31 U. C. Q. B. 73.

Indorsement in blank — Subsequent alteration: *Royal Canadian Bank v. Carruthers*, 28 U. C. Q. B. 578; 29 U. C. Q. B. 283.

Reasonable diligence by assignee: *St. Lawrence & Chicago Forward. Co. v. Molsons Bank*, M. L. R. 1 Q. B. 75.

Right to goods on bill of lading not indorsed: *Domville v. Ferguson*, 1 P. & B. (N.B.) 40.

Before passing of 52 Vict. c. 30 (D.), bills of lading were not negotiable in New Brunswick: *Busby v. Winchester*, *supra*.

Section 4 (Evidence). Similar provision in Provincial Act *intra vires*: *Beard v. Steele*, *supra*. And see *Hately v. Merchants Despatch Co.*, *supra*.

Bill of lading in hands of consignee conclusive evidence against party signing it: *Art. 2422 C. C.*; *Hart v. Pearson*, Q. R. 12 S. C. 540.



# ANNOTATIONS.

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## CHAPTER 119.

### Bills of Exchange, Cheques, and Promissory Notes.

#### INTERPRETATION.

Section 2 (a) "Acceptance." See ss. 35 to 39 inclusive for a definition of the nature and conditions of "acceptance." See clause (f) *infra* and s. 40 for the meaning and requisites of "delivery" as used in this clause. See s. 39 with reference to "notice" by drawee to person entitled to the bill of his acceptance.

Section 2 (b) "Action." The following sections contain provisions respecting actions: 49, 58, 93, 157 and 183. This clause and clause (k) deal with procedure in provincial Courts, but the Dominion has the right to so interfere. See *Tennant v. Union Bank of Canada* (1894) A. C. 31, and *Grand Trunk Ry. Co. v. Attorney-General for Canada* (1906), 23 L. T. R. 40.

Section 2 (d) "Bearer." See s. 21. "Bearer" is a "holder." See clause (g) *infra*.

Section 2 (e). As to "Bill," see ss. 17 and 165, and notes thereon. For "Note," see Part IV.

Section 2 (f). "Delivery" . . . from one person to another. See the definition of "person" in the Interpretation Act, R. S. C., 1906, c. 1, s. 34 (20). And see "delivery" in ss. 40 and 41 of the Act.

Section 2 (g). "Holder." Every "bearer" of a bill within the meaning of the definition in clause (d) of this section is the "holder" of it. See *Howard v. Godard* (1860), 9 N. B. R. 452.

Section 2 (h). An indorsement must be an assignment by somebody who has a right to assign, and if made by a stranger is no indorsement at all: *Tai Yune v. Blum* (1893), 3 B. C. R. 21.

Section 2 (j). See definition of "valuable consideration" in s. 53.

Section 2 (l). See s. 43, *infra*, as to "non-juridical days."

## PART I.

Section 3. "Good faith" as attempted to be defined by this section, apparently means absence of fraud. "Bad faith" and "fraud" are synonymous." Per Coffey, C.J., in *Hilgenberg v. Northup*, 33 N. E. Rep. at p. 787. It is taken from s. 90 of the Imperial Act of 1882 (45 & 46 Vict. c. 61). Cf. ss. 30, 58, 172 and 175 hereof.

Section 5. Before the Act it was decided in Ontario that an instrument in the form of a note signed and sealed was not a promissory note, see *Wilson v. Gates* (1858) 16 U. C. Q. B. 278. See also *Merritt v. Maxwell* (1856) 14 U. C. Q. B. 50; *Merchants Bank v. U. E. Club* (1879), 44 U. C. Q. B. 468. But see as to the liability of a municipal corporation on a promissory note, *Armstrong v. Garrafraxa* (1879) 44 U. C. Q. B. 515.

Section 6. "Non-business days" are the non-juridical days specifically mentioned in s. 43.

Section 7. The express provisions of the Act referring to Cheques are found in Part III.

Section 8. See annotations to ss. 76 (a), 76 (c) and (d), and 91 of the Bank Act, c. 29 ante.

Section 10. The "law merchant." "The law merchant, as it is a part of the law of nature and nations, is universal, and one and the same in all countries in the world. . . . There is not one law in England, another in France, another in Spain, another in Germany, but the same rules of reason and the like proceedings of the law merchant are observed in every nation:" Sir John Davies, 'Concerning Impositions' (1656) c. 3. "In Edward I.'s day the 'lex mercatoria' was already conceived as a body of law differing in some respects from the Common Law. Within certain limits it was for the merchants themselves to declare this law. . . . Probably in some respects it took a more liberal and modern view of contractual obligations than that which was taken by the Common Law:" Professor Maitland, "Fair of St. Ives, Introd. p. 132 (Sel. Soc. Pub. vol. ii.). "The law merchant is a system of equity, founded on the rules of equity, and governed in all its parts by plain justice and good faith:" Per Buller, J., in *Master v. Miller*, 4 T. R. 320. "Some parts of it were undoubtedly borrowed from the Roman law; but when, by whom, and in what circumstances, it is not always possible to say.

Never the law of this country, the Roman law was often referred to as a general body of doctrine, suited to supply the deficiencies of the law of every civilized country. The writers on mercantile law, here and on the Continent, sought in Roman law solutions for difficult and novel problems, and often found them." *Smith's Mercantile Law* (10th ed.), Intro. lxxv. And see per *Davies, J.*, in *Bank of Montreal v. The King*, 38 S. C. R., as to the application of the law merchant to a case not provided for by the Act.

Sections 14 and 15. The main provision respecting a note forming part of the purchase money of a patent right, comes originally from the Act 47 Vict. c. 38. The provision in s. 14, s.-s. 2, as to the effect of the omission of the words "given for a patent right" was introduced by 53 Vict. c. 33, s. 30. Prior to the latter enactment, it was held that the omission of such words did not render a note void as between the maker and the payee, and that the intention of the Act was to give the indorsee or transferee notice, and to put him in the position of the payee as to any defence which the maker might have against a claim by the payee: *Girvin v. Burke*, 19 Ont. R. 204. When this case was decided the bill which afterwards became the Bills and Notes Act of 1890, was still before Parliament. (See *Senate Debates*, 1890, pp. 464, 465.) *Johnson v. Martin* (1892) 19 Ont. A. R. 592, decided that an indorsee for value before maturity who took a note given for a patent without these words, with knowledge of the consideration, could not recover. See also *Craig v. Samuel* (1895) 24 S. C. R. 278.

See s. 16 as to penalty for issuing or transferring note, the consideration of which in whole or in part is the price of a grant of a patent right, without words "Given for a patent right" printed or written across the face thereof.

## PART II.

### BILLS OF EXCHANGE.

Section 17. "An unconditional order." Before the Act the following order was held to constitute a valid bill:—"Mr. Warren, please let the bearer, William Tuke, have the amount of £10, and you will oblige me, B. B. Mitchell." *Reg. v. Tuke* (1858) 17 U. C. Q. B. 296. But, in Quebec, an open letter from one government officer to another,

desiring the latter to pay plaintiff a certain sum of money due him by the government, was held not to be a valid bill: *McLean v. Ross* (1816), 3 Rev. de Leg. 434. See also *Jacques Cartier Bank v. The Queen* (1895) 25 S. C. R. 84.

“In writing”: See the Interpretation Act, R. S. C., 1906, c. 1, s. 34 (31), where “writing” is extended to include words “printed, painted, engraved, lithographed, or otherwise traced or copied.”

Parol evidence is not admissible to vary the obligations of parties as appearing upon the negotiable instrument itself: *Hart v. Davy* (1843), 1 U. C. Q. B. 218; *Hall v. Francis* (1854) 4 U. C. C. P. 210; *Moore v. Sullivan* (1862), 21 U. C. Q. B. 445; *Decelles v. Samoisette* (1888) M. L. R. 4 S. C. 361; *Taylor v. McFarlane* (1878) 12 N. S. R. 190; *Smith v. Squires* (1901), 13 Man. R. 360; *Emerson v. Erwin* (1903), 10 B. C. R. 101; *Moore v. Grosvenor* (1890), 30 N. B. R. 221; *Conley v. Ashley* (1902) 1 Ont. W. R. 704. But parol evidence is admissible to shew real date of instrument as against ostensible date, the identity of payee, or that the delivery was conditional only, or to impeach the consideration for the instrument: *Northfield v. Lawrence* (1891), M. L. R. 7 S. C. 148; *Downie v. Francis* (1885) 30 L. C. J. 22; *Wallace v. Souther*, 20 N. S. R. 509; 16 S. C. R. 717; *Lindsay v. Zwicker* (1870), 8 N. S. R. 100. Note effect of s. 142 as to right to lead parol evidence to show renunciation of rights of holder against parties liable. See *Jenkins v. Bossom* (1880), 13 N. S. R. 540, as to binding effect of contemporaneous agreement in writing.

“Addressed by one person to another.” See definition of “person” in Interpretation Act, R. S. C., 1906, c. 1, s. 34 (20).

An instrument otherwise regular in form, but not addressed to any drawee is not a bill of exchange: See *Forward v. Thompson* (1854), 12 U. C. Q. B. 103; *McPherson v. Johnston* (1894) 3 B. C. R. 465.

Nor is a warrant signed by a committee of a city council, and addressed to the city treasurer, because drawer and drawee represent the same person: *Charlebois v. City of Montreal* (1898), Q. R. 15 S. C. 96.

A departmental “letter of credit” was held not to be a bill of exchange in *Jacques Cartier Bank v. The Queen*, 25 S. C. R. 84.

“Signed.” Signature by a cross or mark is sufficient: *Noad v. Chateauvert* (1846), 1 Rev. de Leg. 229; *Remillard v. Moisan* (1899) Q. R. 15 S. C. 622. But see *Jones v. Hart* (1819) 2 Rev. de Leg. 58.

A signature in the following form: "A. & Co. by A. Junr.," *prima facie* imports that A. signs the instrument for, and not as one of, the firm:— *Dowling v. Eastwood* (1846) 3 U. C. Q. B. 376.

"On demand, or at a fixed or determinable future time." In the recent case of *Laforest v. Babineau* (37 S. C. R. 521, affirming 37 N. B. R. 156), the following was held a good promissory note:—

"Edmundston, N.B., July 12, 1899.

\$1,200.

"Received from the Reverend N. P. Babineau, the sum of twelve hundred dollars, for which I am responsible, with interest at the rate of seven per cent. per annum, upon production of this receipt and after three months' notice. (Signed) Fred Laforest."

See ss. 23 and 24 of the Act.

"A sum certain in money." "Money . . . is not necessarily either gold, silver, or paper. It is just what the people of the country, where the instrument is made, choose to treat as money; in other words, as currency. . . . It may be payable in coins, such as guineas, ducats, doubloons, crowns, or dollars, or in the known currency of the country, as in pounds sterling, livres, tournoises, francs, florins, etc., for in all these and in the like cases, the sum of money to be paid is fixed by the par of exchange, or the known denomination of the currency with reference to the par:" Per *Harrison, C.J.*, in *Third National Bank of Chicago v. Cosby* (1877), 41 U. C. Q. B. at p. 408.

Held, that a promissory note made in Canada and payable in the United States, and in the currency thereof, was a good promissory note: *Ibid.* "Currency means United States currency," when note payable in United States: *Wallace v. Souther* (1889), 16 S. C. R. 717. See also *St. Stephen Ry. Co. v. Black* (1870), 13 N. B. R. 139; *Dunn v. Allen* (1884), 24 N. B. R. 1; *Northwestern National Bank v. Jarvis* (1883), 2 Man. R. 53.

Quære: Whether an instrument purporting to be a bill of exchange, payable in New York, "with current funds," if it mean other than lawful money of the United States, is a bill of exchange? *Stephens v. Berry*, 15 U. C. C. P. 548.

The following: "Ten days after date, we promise to pay to M. N. £85 15s. for value received," upon which when given was indorsed:—"It is agreed that the note is to be paid by a lawful mortgage, with interest on the same, having three years to run," held not to be a "note" between original parties: *Newhorn v. Lawrence*,

5 U. C. Q. B. 359. "Toronto, 12th May, 1858. Six months after date, we promise to pay to J. B., or order, \$400 (signed), N. J., W. W. B., E. W. D. The above note is to be paid in merchantable lumber, to be delivered in Toronto at cash price, and an additional quantity of lumber sufficient to pay the freight is to be sent in. If not so paid within the time, then the same is to be paid in cash." All this was on the face of the instrument. Held, not a valid note: *Boulton v. Jones* (1860), 19 U. C. Q. B. 517. But see *McKinnon v. Campbell*, 6 U. C. L. J. 58.

A promise to pay in "cash or mortgage upon real estate," not being an absolute promise to pay money, is not a note; nor does it become so by the maker's election to pay in cash: *Going v. Barwick* (1857) 16 U. C. Q. B. 45. See also *Downs v. McNamara* (1846), 3 U. C. Q. B. 276; *McRobbie v. Torrance* (1888) 5 Man. R. 114; *Newhorn v. Lawrence* (1848) 5 U. C. Q. B. 359.

A promise to pay a certain sum "with exchange on New York," was held not to constitute a good note, as the amount was rendered uncertain by the uncertainty of exchange: *Fahnestock v. Palmer*, 9 U. C. C. P. 172; and see *Saxton v. Stevenson* (1874), 23 U. C. C. P. 503.

"To the order of a specified person." "Person" includes any body corporate and politic, and the heirs, executors, administrators or other legal representatives of such person, according to the law of that part of Canada to which the context extends: Interpretation Act (R. S. C., 1906, c. 1), s. 34, s.-s. 20, annotated ante.

"Or to bearer." See note to s. 21 (3) *infra*.

**Section 17, s.-s. 2** ("Act to be done in addition to payment"). In the following cases negotiable instruments were adjudged invalid because of their ordering or promising some act to be done in addition to the payment of money: *Coté v. Lemieux* (1859), 9 L. C. R. 221; *Melville v. Bedell* (1832), *Stevens*, N. B. Digest, p. 216; *Gillin v. Cutler* (1857) 1 L. C. J. 277; *Sutherland v. Patterson*, 4 Ont. R. 565; *Hall v. Merrick* (1877) 40 U. C. Q. B. 566; *Dominion Bank v. Wiggins* (1894) 21 Ont. A. R. 275; *Prescott v. Garland* (1897) 34 N. B. R. 291; *Bank of Hamilton v. Gillies* (1899) 12 Man. R. 495; *Imperial Bank v. Bromish* (1895) 16 C. L. T. (Occ. N.) 21.

The provisions of this sub-section are expressly modified by the Act in the case of promissory notes. See s. 176, s.-s. 3 and notes *infra*.

**Section 17, s.-s. 3** (Unconditional order—Particular fund). See the following cases where instruments held invalid for designating particular fund: *Fullerton v. Chapman*

(1871) 8 N. S. R. 470; *Brett v. Lovett* (1871) 8 N. S. 8. 472; *Ockerman v. Blacklock* (1862) 12 U. C. C. P. 362; *Perth v. McGregor* (1862) 21 U. C. Q. B. 459; *Bank of B. N. A. v. Gibson* (1892) 21 Ont. R. 613. But see *Chesney v. St. John* (1879) 4 Ont. A. R. 150; *Wood v. Shaw* (1858) 3 L. C. J. 169.

Section 18 (Payable on contingency. See *Dooly v. Ryerson* (1874) 1 Q. L. R. 219; *Duchaine v. Maguire* (1882) 8 Q. L. R. 295; *Wood v. Higginbottom* (1813) 2 Rev. de Leg. 28; *Russell v. Wells* (1848) 5 U. C. O. S. 725; *Garner v. Hayes* (1884) 10 Ont. A. R. 24; *Thomson v. Huggins* (1896) 23 Ont. A. R. 191.

Section 19 (Payee, drawer or drawee). See *Golding v. Waterhouse*, 16 N. B. R. 313.

Section 19, s.-s. 2 (Alternative payees). See note to following sub-section.

Section 19, s.-s. 3 (Holder of office). See Imperial Act, s. 7, s.-s. 2. In the 6th edition of *Chalmers on Bills of Exchange*, at p. 21, it is said:—"This sub-section materially alters the law. Before its enactment a bill drawn payable to the 'treasurer for the time being' of a society was void for uncertainty; so, too, was a bill drawn payable 'to the order of T. Smith or S. Jones,' unless there was apparent community of interest." The cases are conflicting in Canada, but it is not useful to collect them in view of the clear meaning of the text.

Section 20 (Drawee to be named). See note to s. 26, *infra*.

"Reasonable certainty." See *Peto v. Reynolds* (1854) 9 Exch. 410 and 11 Exch. 418. Cf. *Goirand's French Code of Commerce* (2nd ed.), p. 180 et seq. Cf. *Alexander v. Sizer* (1869) L. R. 4 Ex. at p. 105.

Section 21 ("Transfer"). The words "non-negotiable and given as security," written on the face of the note, deprives it of its essential characteristic as a promissory note, and it becomes a mere contract of suretyship: *Davis v. Robertson*, Q. R. 6 Q. B. 264.

In an Ontario case, decided before the passage of the Bills of Exchange Act, 1890, it was held that although the note was not negotiable the indorsee was entitled to recover from the maker, it being shown that the note was intended by the makers to have been made negotiable, and was issued by them as such, but, by mistake or inadvertence, it was not expressed to be payable

to the order of the payee: *Harvey v. Bank of Hamilton*, 16 S. C. R. 714. Cf. *Goirand's French Code of Commerce* (2nd ed.), p. 181, et seq.

**Section 21, s.-s. 3 (Payable to bearer).** A cheque payable to C. M. & S., or bearer, was indorsed by them, and stamped for deposit to their credit in a bank. Their clerk, instead of depositing it, drew the funds, the teller not observing the special indorsement. Held, that as the "bearer" (the clerk) was entitled to receive payment, the bank which paid was not liable: *Exchange Bank v. Quebec Bank* (1890), M. L. R. 6 S. C. 10. See, however, s. 68, clause 2, which would seem to make such an indorsement a restrictive one.

**Section 21, s.-s. 4 ("Reasonable certainty").** See note to s. 20, *supra*.

**Section 21, s.-s. 5 ("Fictitious person").** Cf. s. 7, s.-s. 3 of the Imperial Act. The draughtsman of that Act, Chalmers (*Bills of Exchange*, 6th ed., p. 22), says: "This subsection was inserted in committee in place of a clause working out in detail the effect of the cases." See the ruling case upon the interpretation of the section: *Bank of England v. Vagliano Bros.*, [1891] A. C. 107, reversing s. c. in 23 Q. B. D. 243. See also a full discussion of the case in *Law Quarterly Rev.*, vol. 7, p. 216, and in vol. 10, p. 40. See also the Canadian case of *London Life Insurance Co. v. Molsons Bank*, 8 Ont. L. R. 238.

**Section 22 (Payable to order).** This provision changes the law in Canada as expounded by such cases as *West v. Brown*, 3 U. C. Q. B. 290; *Harvey v. Bank of Hamilton*, 16 S. C. R. 714; *Jones v. Whitty*, 9 L. C. R. 191; *McCorkill v. Barrabé*, M. L. R. 1 S. C. 319. See *Mallette v. Sutcliffe*, Q. R. 5 S. C. 430; *Desy v. Daly*, Q. R. 12 S. C. 183; *Ward v. Quebec Bank*, Q. R. 3 Q. B. 122.

**Section 22, s.-s. 2.** See *Myers v. Wilkins*, 6 U. C. Q. B. 421; *Newton v. Allen*, 2 Rev. de Leg. 29.

**Section 23 (Payable on demand).** Demand bills are not entitled to day of grace: See s. 42 of the Act.

**Section 24 (a) (Sight bills).** Sight bills are entitled to days of grace: See s. 42 of the Act.

**Section 24 (b) (Specified event).** See *Hogg v. Marsh*, 5 U. C. Q. B. 319; *Massey Mfg. Co. v. Perrin*, 8 Man. R. 457.



Section 25 (Inland Bill). These provisions do away with the rule observed in *McLellan v. McLellan*, 17 U. C. C. P. 109, that a bill or note made in one province and payable in another is to be treated as foreign. They also override any pre-existing provincial legislation to the contrary. Cf. as to promissory note, s. 177 *infra*.

Section 25, s.-s. 3 (Presumption of inland character). The advantage to the holder under this provision is that an inland bill need not, except in Quebec, be protested if dishonoured. See s. 113 *infra*.

Section 26 (Drawer and drawee). In such a case notice of dishonour need not be given as regards the drawer. See ss. 92 and 107. ("Fictitious person"). Cf. note to s. 21, s.-s. 5. See the English case of *Smith v. Bellamy*, 2 Stark. 223.

Section 27 (Defects not fatal). (a) "Date"—Presumed to be dated on day made: See English case of *Hague v. French*, 3 B. & P. 173. Proof of date by parol: See English case of *Davis v. Jones*, 17 C. B. 625.

(b) "Value received"—Effect of: *Laroque v. Franklin County Bank*, 8 L. C. R. 328. But where these words are used, parol evidence is admissible to prove contrary: *Davis v. McSherry*, 7 U. C. Q. B. 490; *Baxter v. Bilo-deau*, 9 Q. L. R. 268.

(c) Place payable: See s. 93, *infra*, and notes.

(d) Irregular date—"Post-dated:" See *Forster v. Mackreth*, L. R. 2 Ex. 163; *Royal Bank v. Tottenham*, [1894] 2 Q. B. 715.

"Sunday." See *Begbie v. Levi*, 1 Cr. & J. 180; *Houliston v. Parsons*, 9 U. C. Q. B. 681; *Crombie v. Overholtzer*, 11 U. C. Q. B. 55.

Section 28 ("Sum certain"). See notes to s. 17 *supra*.

(a) ("With interest"). See R. S. C., 1906, s. 120. R. S. C., 1906, c. 122. And see *Young v. Fluke*, 15 U. C. C. P. 360.

(b) ("Stated instalments"). See *Berton v. Central Bank*, 10 N. B. R. 493; *McQueen v. McQueen*, 9 U. C. Q. B. 536; *Clearihue v. Morris*, 2 Rev. de Leg. 30.

(d) ("With exchange"). See *Third National Bank of Chicago v. Crosby*, 43 U. C. Q. B. 58. See also notes to s. 17 *supra*.

Section 28, s.-s. 3 (Date from which interest runs). See *Howland v. Jennings*, 11 U. C. C. P. 272; *Dechantal v. Pominville*, 6 L. C. J. 88.

(Interest after maturity). See s. 134, *infra*, and notes.

Section 31 (Inchoate instruments). Liability of maker: See *McInnes v. Milton*, 30 U. C. Q. B. 489; *Ford v. Auger*, 18 L. C. J. 296; *Bank of Nova Scotia v. Lepage*, M. L. R. 6 S. C. 321; *Burton v. Goffin*, 5 B. C. R. 454; *British Columbia L. & I. Agency v. Ellis*, 6 B. C. R. 80; *Mutual Safety Co. v. Porter*, 7 N. B. R. 230.

Liability of indorser: See *Sandford v. Ross*, 6 U. C. O. S. 104; *Rossin v. McCarty*, 7 U. C. Q. B. 100; *Dorwin v. Thompson*, 13 L. C. J. 262.

(Note obtained by fraud). Where a signature was obtained ostensibly for a receipt, and a note was written over it, the signer was held not liable: *Banque Jacques Cartier v. Lescard*, 13 Q. L. R. 39. But see the cases cited under following section.

Section 32 (Holder in due course). As to exemption from restrictions as to "time" and "authority" in next preceding section: See *Hanscome v. Cotton*, 15 U. C. Q. B. 42; *Merchants Bank v. Good*, 6 Man. L. R. 339; *First National Bank v. McLean*, 16 Man. R. 32.

Section 33 (Referee in case of need). By Art. 2306 C. C. L. C. the "referee in case of need" (*drawee au besoin*) was dealt with as follows:—"If the bill be unaccepted, and there be a *drawee au besoin*, presentment must be made in like manner to him also."

#### ACCEPTANCE AND INTERPRETATION.

Section 35 (Acceptance). See *Madden v. Cox*, 5 Ont. A. R. 473; *Campbell v. Mackay*, 24 N. S. R. 404; *Quebec Bank v. Miller*, 3 Man. R. 17; *Laing v. Taylor*, 26 U. C. C. P. 416; *Robertson v. Glass*, 20 U. C. C. P. 250; *Foster v. Geddes*, 14 U. C. Q. B. 239; *Bank of Montreal v. De Latre*, 5 U. C. Q. B. 362; *Bank of Montreal v. Smart*, 10 U. C. C. P. 15; *McDougall v. McLean*, 1 Terr. L. R. 450.

Section 36 (a) (Acceptance in writing). Must be on the bill. But see *Bank of Montreal v. Thomas*, 16 Ont. R. 503, and compare *Maritime Bank v. Union Bank*, M. L. R. 4 S. C. 244.

Section 38 (Character of acceptance):

(a) General acceptance: See *Commercial Bank v. Johnston*, 2 U. C. Q. B. 126; *Bank of Upper Canada v. Parsons*, 3 U. C. Q. B. 383; and compare *Fanshawe v. Peet*, 26 L. J. N. S. Ex. 314.

(b) Qualified acceptance: See *Milne v. Prest*, 4 Camp. 393; *Smith v. Virtue*, 30 L. J. C. P. 56; *Julian v. Shobrooke*, 2 Wils. 9.

Section 38, s.-s. 3 (a). Conditional acceptance: See *Bradbury v. Oliver*, 5 U. C. O. S. 703; *McLean v. Shields*, 1 Man. R. 278; *Potters v. Taylor*, 20 N. S. R. 362; *Dufresne v. Jacques Cartier Bldg. Soc.*, 5 R. L. 235; *Ontario Bank v. McArthur*, 5 Man. R. 381.

Section 39 (Acceptance complete). See *Brown v. Howland*, 9 Ont. R. 48; 15 Ont. A. R. 750.

DELIVERY.

Section 40 (b) (Conditional delivery). See *Ontario Bank v. Young*, 2 Ont. L. R. 761; *Chandler v. Beckwith*, 2 N. B. R. 423. And see *Commercial Bank of Windsor v. Morrison*, 32 S. C. R. 98; *Jenks v. Doran*, 5 Ont. A. R. 558; *First National Bank v. McLean*, 16 Man. L. R. 32.

COMPUTATION OF TIME, ETC.

Section 46 (Due date). See *Drapeau v. Pominville*, Q. R. 11 S. C. 326, where it was held that a promissory note dated 7th November, 1895, and payable "21st November, next," was to be taken as payable on the 21st November, 1896, and not on that date in 1895.

CAPACITY AND AUTHORITY OF PARTIES.

Section 47 (Capacity). See s. 30, Interpretation Act, as to powers of federal corporations. As to provincial corporations, *Maclaren on Bills*, 3rd ed., 125, gives list of general Acts of respective provinces, and at page 127 cases as to powers thereunder.

Unless power is expressly conferred by will, executor cannot pledge credit of estate by indorsing accommodation notes to establish or advance the interests of beneficiaries: *Lionais v. Molsons Bank*, 10 S. C. 526.

Section 48 (Effect of disability). Holder of note payable to a society or bearer may recover from maker though society could not indorse or transfer notes: *Hammond v. Small*, 16 U. C. Q. B. 371.

Note made by infant indorsed by his father, who was of unsound mind and unable to understand what he was doing. Indorser received no consideration and person to whom note was given was not aware of his condition. Indorser's estate not liable. *In re James*, 9 Ont. P. R. 88.

**Section 49 (Forgery, etc.).** Forgery of note cannot be ratified: *Merchants Bank of Canada v. Lucas*, 18 S. C. 704, affg. 15 Ont. A. R. 573.

Parties whose names were forged as makers of a note on receiving notice from the bank discounting it, that it will fall due on a day named, and asking them to provide for it, held estopped from denying their signature when they did not at once notify the bank, by telephone or telegraph, that it was forged: *Ewing v. Dominion Bank*, 35 S. C. 133.

Bill drawn by a company to their own order was paid by acceptor who had previously discovered that the name of the company was forged as drawer and also as indorser. Held, that though acceptor was estopped from denying the signature of the company as drawer, he was not estopped from denying their signature as indorser and could recover the amount of the bill from the bank which discounted it: *Ryan v. Bank of Montreal*, 12 O. R. 39; 14 Ont. A. R. 533. And see *Rex v. Bank of Montreal*, 10 Ont. L. R. 117; 11 Ont. L. R. 595, affirmed by Sup. Court, 19th February, 1907.

Acceptor not barred by delay when there was no party to the bill against whom the bank could have recourse; *Ryan v. Bank of Montreal*, *supra*.

President of company without authority from directors made a note signed "S. President" with seal attached, and had it discounted by private bankers. S. was a defaulter to company of more than the amount of the note. Held, company could not repudiate liability on note and also recover amount of same from bankers: *Bridgewater Cheese Factory Co. v. Murphy*, 26 O. R. 327; 23 Ont. A. R. 66; 26 S. C. 443.

**Section 51 (Procuration).** Acceptance or indorsement "per pro." puts taker on inquiry as to extent of acceptor's or indorser's authority: *Bryant v. Banque du Peuple* [1893] A. C. 170.

If he has authority abuse of it does not affect bona fide holder for value: *Ib.*

**Section 52 (Representative capacity).** Bill drawn by "A. Agt." on and accepted by principal. Drawer personally liable: *Reid v. McChesney*, 8 U. C. C. P. 50.

Also assignee of partnership, without authority to make notes for the firm, who signed notes with "assignee" after his name: *Boyd v. Mortimer*, 30 O. R. 290.

Inspector of insurance company who signed note "A. Squier, Inspector" for amount of policy holder's claim for loss held personally liable: *Hagarty v. Squier*, 42 U. C. Q. B. 165.

But where note was signed "R. Manager O. L. Co." individual members of the company were held liable: *Fairchild v. Ferguson*, 21 S. C. 484. And see *Brown v. Howland*, 15 Ont. A. R. 750, affirming 9 O. R. 48; *Madden v. Cox*, 5 Ont. A. R. 473, affirming 44 U. C. Q. B. 542.

#### CONSIDERATION.

Sections under this head apply also to promissory notes. See s. 186.

Section 53 (Valuable). Note to secure amount of fraudulent preference from an insolvent to a particular creditor is wholly void: *Brigham v. Banque Jacques-Cartier*, 30 S. C. 429.

Joint and several note of partners given as collateral to mortgage. Partnership being dissolved partner continuing business received discharge of mortgage but without paying debt. Other partner not liable on note unless holder could convey mortgaged lands to him on payment: *Allison v. McDonald*, 23 S. C. 635.

Plea that note was given in consideration of forbearance to proceed with prosecution for felony. Held, that particular nature of charge should be proved: *Henry v. Little*, 11 U. C. Q. B. 296. See *Toponce v. Martin*, 38 U. C. Q. B. 411.

Machinery sold, part of price being paid in cash, balance by note, property not to pass until balance was paid. Before note was paid machinery was destroyed by fire. Held, purchaser was liable on note: *Goldie & McCullough Co. v. Harper*, 31 O. R. 284.

Partial failure of consideration no defence: *Dixon v. Paul*, 4 O. S. (U.C.) 327; *Hill v. Ryan*, 8 U. C. Q. B. 443. And see *Kilroy v. Simkins*, 26 U. C. C. P. 281; *Primeau v. Mouchelin*, 15 Man. 360.

Nor that consideration proved less beneficial than represented: *Dutton v. Lake*, 4 O. S. 15.

But damages may be reduced for part that failed: *McGregor v. Bishop*, 14 O. R. 7; *O'Brien v. Ficht*, 18 U. C. Q. B. 241.

A pre-existing debt is a good consideration though mortgage on real estate is given to secure same: *Bank of Upper Canada v. Bartlett*, 12 U. C. C. P. 238.

Pre-existing debt the same as new consideration: *Evans v. Morley*, 21 U. C. Q. B. 547.

Agreement not to proceed with prosecution for permitting gambling in tavern an illegal consideration: *Dwight v. Ellsworth*, 9 U. C. Q. B. 539. And see *Doyle v. Carroll*, 28 U. C. C. P. 218; *Bell v. Riddell*, 10 Ont. A. R. 544.

Antecedent debt good consideration for note transferred as collateral security, and may be enforced by bonâ fide holder for value though void for illegality as between maker and payee: *Canadian Bank of Commerce v. Gurley*, 30 U. C. C. P. 583.

Notes given in payment of subscription to stock in proposed company the objects and purposes of which, through no fault of maker, were never carried out, and company never formed. Held, a total failure of consideration; maker not liable on notes and entitled to recover back amount of one which he had paid: *Bullion Mining Co. v. Cartwright*, 10 Ont. L. R. 438.

No action lies on note or renewal given to raise funds to promote election in Quebec: *St. Pierre v. L'Ecuyer*, Q. R. 23 S. C. 495.

There was no consideration for a note given in payment of premium on an insurance policy on which the insurers would not be liable, as insured was not owner of the property covered though he had believed he was: *Mutual Assur. Co. v. LeMay*, Q. R. 12 S. C. 232.

After debtor has compromised with a creditor his natural obligation to pay balance of debt is good consideration for a note to obtain further credit: *Bédard v. Chaput*, Q. R. 15 S. C. 572.

Release from imprisonment good consideration for note given to secure payment of fine: *Proctor v. Parker*, 12 Man. 528. And see *McGregor v. McKenzie*, 30 N. S. 214, as to forbearance to sue.

Section 55 (Accommodation). Two makers of note, one signing for other's accommodation. After maturity third party signed it. Held, that latter was additional maker and note was materially altered so as to discharge accommodation maker: *Carrique v. Beaty*, 24 Ont. A. R. 302, reversing 28 O. R. 175.

Section 56 (Holder in due course). Indorsement of note in blank and maker's name afterwards signed without authority. Indorsee suing must prove that he is bonâ fide holder for

value: *Hanscome v. Cotton*, 15 U. C. Q. B. 42; 16 U. C. Q. B. 98.

Holder of notes transferred by payee as collateral security against future liability for the latter can collect them at maturity though liability has not arisen: *Ross v. Tyson*, 19 U. C. C. P. 294.

Note indorsed in blank deposited in bank as collateral security for an account. Name of bank was stamped over indorser's name, and account having been transferred to another bank the name of latter was stamped over that of the other, whose manager initialled the transfer. Held, that second bank was holder in due course of the note: *Sovereign Bank v. Gordon*, 9 Ont. L. R. 146. See also *Gauthier v. Reinhardt*, Q. R. 26 S. C. 134.

Section 57 (Subsequent holder). Indorsee without value can recover on a bill or note if any intermediate party is a holder for value: *Wood v. Ross*, 8 U. C. C. P. 299.

Holder in good faith, for value and without notice, cannot recover against maker of note where evidence does not clearly shew that he signed it and establishes that if he did it was in the belief, induced by false representations of agent of payee, that he was signing a petition to Government: *Alloway v. Hrabí*, 14 Man. 627. And see *Banque Jacques-Cartier v. Lalonde*, Q. R. 20 S. C. 43.

Section 58 (Presumption of value). Bank clerk who signed note to cover up deficits in customers' accounts in which he had no personal interest, being coerced by the manager under threats of dismissal and criminal prosecution, held not liable thereon: *Western Bank of Canada v. McGill*, 32 S. C. 581.

Though onus of proving value is on plaintiff where bill or note is affected with fraud, it is not in case of accommodation paper: *Merchants National Bank v. Ontario Coal Co.*, 16 Ont. P. R. 87.

Nor of note indorsed in blank: *Ridgeway v. Dansereau*, Q. R. 17 S. C. 176.

Note given by insolvent to creditor who makes it a condition of signing deed of composition is void as between the parties, but good in hands of bona fide holder for value without notice: *Bellemare v. Gray*, Q. R. 16 S. C. 581, affirmed in review. *Fisher v. Genser*, Q. R. 15 S. C. 605.

The same as to cheque given for gambling debt: *Dion v. Lachance*, Q. R. 14 S. C. 77.

After a debtor has compromised with his creditors obligation to pay balance of one of such debts is good consideration for a note given to the creditor for further credit: *Bédard v. Chaput*, Q. R. 15 S. C. 572.

Release from imprisonment good consideration for note given to secure payment of fine: *Proctor v. Parker*, 12 Man. 528.

#### NEGOTIATION.

Section 60 (By transfer). A bon though not payable to order is negotiable and may be transferred by indorsement unless the contrary is expressed: *Désy v. Daly*, Q. R. 12 S. C. 183.

Section 61 (Without indorsement). See *Dupuis v. Marsan*, 17 L. C. J. 42; *Guerin v. Orr*, 5 L. N. 379; *Coutu v. Rafferty*, M. L. R. 7 S. C. 146; *Vandal v. Douville*, 20 R. L. 305.

Section 62 (Indorsing). Indorsement may be on any part of bill: *Carrique v. Beaty*, 28 O. R. 175.

Section 65 (Order of indorsements). Agreement that indorsers shall not be liable in order: *Elder v. Kelly*, 8 U. C. Q. B. 240; *McLean v. Garnier*, 14 N. S. 432; *Léveillé v. Daigle*, 2 Dor. 129; *Deschamps v. Leger*, M. L. R. 3 S. C. 1.

Section 66 (Conditional indorsement). Note indorsed on express understanding that it should only be payable on happening of a certain condition does not bind indorser if condition is not fulfilled: *Commercial Bank of Windsor v. Morrison*, 32 S. C. 98. And see *MacArthur v. MacDowell*, 23 S. C. 571.

Section 68 (Restrictive indorsement). See *Barthe v. Armstrong*, 5 R. L. 213; *Munro v. Cox*, 30 U. C. Q. B. 363; *Exchange Bank v. Quebec Bank*, M. L. R. 6 S. C. 10.

Section 70 (Overdue bill). Where agent of holder disposes of overdue note without authority, though for good consideration, transferee obtains no title as against principal: *West v. MacInnes*, 23 U. C. Q. B. 357.

Valid agreement to give time an equity attaching to bill as against person taking it after maturity: *Britton v. Fisher*, 26 U. C. Q. B. 338. Also agreement not to negotiate after maturity: *Grant v. Winstanley*, 21 U. C. C. P. 257.



Bonâ fide holder acquiring bill after dishonour takes it subject to equities of all parties having interest: *Young v. MacNider*, 25 S. C. 272. And see *MacArthur v. MacDowell*, 23 S. C. 571.

Understanding between indorser and payee that former is not to be held liable an equity attaching against person taking after maturity: *McQuin v. Sorell*, 2 All. (N.B.) 140.

Also note given as a gift to son by way of advancement: *Thomas v. McLeod*, 1 Han. (N.B.) 588. And agreement to let board bill go in reduction: *Ching v. Jeffery*, 12 Ont. A. R. 432.

Indorsee only liable to equities attaching to bill itself: *Wood v. Ross*, 8 U. C. C. P. 299.

Section 72 (Dishonoured bill). Agreement between maker and payee that note shall be used for a particular purpose only constitutes an equity attaching, if it is used in violation of agreement, in hands of bonâ fide holder for value who takes it after dishonour: *MacArthur v. MacDowell*, 23 S. C. 571.

Section 73 (Re-issue). See *Cuvillier v. Fraser*, 5 U. C. Q. B. 152; *Black v. Strickland*, 3 O. R. 217; *Hovey v. Nolin*, 18 R. L. 439.

Section 74 (Rights of holder). A bank discounting a note in form not negotiable but intended to be so when made, may recover from makers: *Harvey v. Bank of Hamilton*, 16 S. C. 714; 9 O. R. 655, affirmed.

Clerk in office of attorney with whom note indorsed in blank was left for collection may sue though having no interest: *Shepley v. Hurd*, 3 Ont. A. R. 549; *Mills v. Philbin*, 3 Rev. de Leg. 255; *Ridgeway v. Dansereau*, Q. R. 17 S. C. 176. And see *Street v. Quinton*, 18 N. B. 567.

Insurance agent can sue on note given for premium: *McDonald v. Smail*, 25 N. S. 440.

Note given for lottery tickets not void: *Evans v. Morley*, 21 U. C. Q. B. 547.

But is if given for gambling debt: *Birolean v. Derouin*, 7 L. C. J. 128; *Contra, Dion v. Lachance*, Q. R. 14 S. C. 77.

#### PRESENTMENT FOR ACCEPTANCE.

Section 75 (When necessary). Sub-section 2 is new law in Ontario. See *Richardson v. Daniels*, 5 U. C. O. S. 671.

Section 77 (Sight bill). What is "reasonable time" is a mixed question of law and fact: *Perley v. Howard*, 2 Kerr (N.B.) 518.

As to what constitutes reasonable time see *Boyes v. Joseph*, 7 U. C. Q. B. 505; *Harris v. Schowb*, 3 R. L. 453; *Wylde v. Wetmore*, 1 G. & O. (N. S.) 504.

#### PRESENTMENT FOR PAYMENT.

Section 85 (Necessity). Presentment necessary when note becomes due by insolvency of maker and indorser: *Banque Nationale v. Martel*, Q. R. 17 S. C. 97.

Bill should be produced: *De la Chevrotiere v. Guilmet*, 9 L. N. 412; *Jordan v. Coates*, 2 All. (N.B.) 107.

Section 87 (By and to whom). Non-presentment before suspension of bank: *Blackley v. McCabe*, 16 Ont. A. R. 295.

Law of Lower Canada same as that of Ontario and England: *McLellan v. McLellan*, 17 U. C. C. P. 109.

Presentment at bank after hours not sufficient in Quebec: *Watters v. Reiffenstein*, 16 L. C. R. 297.

Nor at a store after business hours in New Brunswick: *Patterson v. Tapley*, 4 All. (N.B.) 292. But if made at store closed at 5 p.m. it is good: *Reed v. Kavanagh*, 4 All. 457.

As to case of drawee or acceptor being dead: *Dana v. Bradley*, 5 All. (N.B.) 292.

Section 88 (Place of presentment). Change of address—Diligence: *Browne v. Boulton*, 9 U. C. Q. B. 64.

Due diligence. Bank's liability for failure to present: *Browne v. Commercial Bank*, 10 U. C. Q. B. 129.

Note payable at particular place need not be presented there at maturity to charge maker, though there are funds to meet it. Maker should keep funds there until presentment: *Merchants Bank of Canada v. Henderson*, 28 O. R. 360.

If bill is at place for payment at maturity it is sufficiently presented: *Merchants Bank v. Mulvey*, 6 Man. 467.

Section 89 (No person at place). See *Becher v. Amherstburg*, 23 U. C. C. P. 602; *McRobbie v. Torrance*, 5 Man. 114.

Section 91 (Delay). Valid excuse: *Union Bank v. McKilligan*, 4 Man. 29.

Section 92 (Dispensed with). Not in case of indorsement after maturity: *Davis v. Dunn*, 6 U. C. Q. B. 327. Nor by

insolvency of acceptor: *Quebec Bank v. Ogilvie*, 3 Dor. 200. Nor dangerous illness of maker: *Nowlin v. Roach*, 2 Kerr (N. B.) 337. Waiver: *McCarthy v. Phelps*, 30 U. C. Q. B. 57; *City Bank v. Hunter*, 2 Rev. de Leg. 171; *Whitehouse v. Bedell*, 26 N. B. R. 46; *Deering v. Haydon*, 3 Man. 219. And see *Blackley v. McCabe*, 16 Ont. A. R. 295; *Union Bank v. Gibeault*, 12 Q. L. R. 145.

Section 93 (Specified place). See *O'Brien v. Stevenson*, 15 L. C. R. 265; *Crepeau v. Moore*, 8 Q. L. R. 197; *Ratchford v. Griffith*, 2 Kerr (N.B.) 112; *Biggs v. Wood*, 2 Man. 272.

#### DISHONOUR.

Section 97 (Notice). Where indorser of note died before it matured, notice of dishonour addressed to him at the place where it was dated, the holder not knowing of his death, was sufficient and binding on his executors: *Cosgrave v. Boyle*, 6 S. C. 165. And see *Hay v. Burke*, 16 Ont. A. R. 463.

Though holder and indorser resided in same town notice addressed to latter at place where note was dated and deposited in the post office was sufficient though receipt of same was not proved: *Merchants Bank of Halifax v. McNutt*, 11 S. C. 126.

Indorser of note as surety for her husband died intestate before maturity. Notice addressed to husband "executor of last will of M. A. Bell, Perth," and received by him, held sufficient though he had not administered: *Merchants Bank v. Bell*, 29 Gr. 413. And see *Gillespie v. Marsh*, 1 U. C. C. P. 453.

Section 98 (Requisites). Notice to husband as agent of wife. Sufficiency: *Counsell v. Livingston*, 2 Ont. L. R. 582, 4 Ont. L. R. 340.

Notice by telegram: *McLean v. Garnier*, 15 N. S. 276.

Writ of summons not notice though served on day note was dishonoured: *Commercial Bank v. Allan*, 10 Man. 330.

Section 103 (Sufficiency of notice). Death of indorser: *Cosgrave v. Boyle*, 6 S. C. 165.

By mail though holder and indorser reside in same town: *Merchants Bank of Halifax v. McNutt*, 11 S. C. 126.

Need not state that note had been presented for payment: *Blinn v. Dixon*, 5 U. C. Q. B. 580.

No objection that notice was dated on Sunday: *Ib.*

Indorser not misled by mistake in date: *Cassidy v. Mansfield*, 20 U. C. C. P. 383; *Low v. Owen*, 12 U. C. C. P. 101.

Mistake in amount. Subsequent promise to pay: *Thompson v. Cotterell*, 11 U. C. Q. B. 185.

Place may be designated by party "under his signature" through another person: *Hay v. Burke*, 16 Ont. A. R. 463.

Notice sent to place designated sufficient though sender knows it is not indorser's place of residence or business: *Ib.*

Notice to wrong address given by agent of indorser sufficient: *Vaughan v. Ross*, 8 U. C. Q. B. 506; *McMurry v. Powers*, 10 U. C. Q. B. 481.

**Section 106** (Notice dispensed with). Indorser of dishonoured note told holder that he would see maker about it and afterwards told him he had seen maker, who promised to pay as soon as he could, and requested holder not to "crowd the note." Held, not waiver of notice of dishonour: *Britton v. Milsom*, 19 Ont. A. R. 96. And see *Fraser v. McLeod*, 2 Terr. L. R. 154.

But where indorser writes to holder in a way to make latter believe notice to be unnecessary, and especially when he states that maker is insolvent notice is dispensed with: *Beckett v. Cornish*, 4 U. C. Q. B. 138. And a conditional promise to pay in land, or see that holder loses nothing, waives objection as to notice: *Burke v. Elliott*, 15 U. C. Q. B. 610. And see as to promise to pay *Shaw v. Salmon* 19 U. C. Q. B. 512; *Leith v. O'Neill*, 19 U. C. Q. B. 233; *McCarthy v. Phelps*, 30 U. C. Q. B. 57. As to request for time: *Bank of Montreal v. Scott*, 24 U. C. Q. B. 115.

#### PROTEST.

**Section 110** (Dispensed with). Notice of protest must be given where note becomes due by insolvency of maker and indorser: *Banque Nationale v. Martel*, Q. R. 17 S. C. 97. And see section 106.

**Section 111** (Delay excused). Curator to cession de biens has no authority to waive protest of note indorsed by insolvent: *Molsons Bank v. Steele*, Q. R. 23 S. C. 316; *Denenberg v. Mendelsohn*, Q. R. 22 S. C. 474, affirmed by 23 S. C. 128. Contra: *In re Boutin*, Q. R. 12 S. C. 186.

Indorsing on note "I hold myself responsible for my note" is waiver of protest: *Ranger v. Aumais*, 5 Que. P. R. 450. And see *McLaurin v. Seguin*, Q. R. 12 S. C. 63.

Section 116 (Better security). Where maker and indorser both become insolvent holder may proceed against both, but before proceeding against indorser should protest note: *Banque Nationale v. Martel*, Q. R. 17 S. C. 97.

LIABILITIES OF PARTIES.

Section 127 (Equitable assignment). Unaccepted cheque not an equitable assignment: *Caldwell v. Merchants Bank*, 26 U. C. C. P. 294. But otherwise in Quebec: *Marler v. Molsons Bank*, 23 L. C. J. 293.

Section 128 (Engagement by acceptance). Drawee promising to accept or obtaining benefit of funds: *Torrance v. Bank B. N. A.* 15 L. C. J. 169; 17 L. C. J. 185; *Dunspaugh v. Molsons Bank*, 23 L. C. J. 57; *Bank of Montreal v. Thomas*, 16 O. R. 503.

Acceptor liable where drawee's signature forged: *Rex v. Bank of Montreal*, 11 Ont. L. R. 595, affirming 10 Ont. L. R. 117. Affirmed by Sup. Court 19 Feb., 1907: *Ryan v. Bank of Montreal*, 12 O. R. 39; 14 Ont. A. R. 533.

Validity of indorsement where bill is indorsed before acceptance: *Ryan v. Bank of Montreal*, supra.

Section 129 (Estoppel). Applies also to notes. Section 186.

Indorser of note purporting to be drawn by corporation estopped from claiming it was ultra vires of the makers: *Merchants Bank v. United Empire Club*, 44 U. C. Q. B. 468.

Section 131 (Irregular indorsement). Applies also to notes: see section 186.

Surety for a debt wrote his name across back of note made by debtor. Being sued as maker there was no evidence that he intended to become such. Held, that he might have been liable as indorser had notice of dishonour been given: *Ayr American Plough Co. v. Wallace*, 21 S. C. 256.

Promissory note made by two persons, one signing for accommodation of the other. After maturity it was signed by a third person. Held, that latter signed as maker not indorser: *Carrique v. Beaty*, 24 Ont. A. R. 302, reversing 28 O. R. 175.

Where note payable to person named is indorsed by another before delivery to payee, former is liable as indorser to holder in due course: *Duthie v. Essery*, 22 Ont. A. R. 191; *Robinson v. Mann*, 31 S. C. 484, reversing 2 Ont. L. R. 63.

But where person signed his name on back of note and payees afterwards indorsed it "without recourse" he was not liable to the latter as indorser, surety or otherwise: *Canadian Bank of Commerce v. Perram*, 31 O. R. 116. And see *Small v. Henderson*, 27 Ont. A. R. 492; *Craig v. Matheson*, 32 N. S. 452.

Section 132 (Trade name). Note signed "R. Manager R. L. Co." Individual members of company held liable: *Fairchild v. Ferguson*, 21 S. C. 484.

Section 133 (Indorser). See *Small v. Riddel*, 31 U. C. C. P. 373; *Poisson v. Bourgeois*, Q. R. 17 S. C. 94; *McRae v. Lionais*, Q. R. 16 S. C. 262; *McLeod v. Carman*, 1 Han. (N.B.) 602.

Section 134 (Measure of damages). Note carrying interest at rate of "two per cent. per month until paid" only bears legal rate of six per cent. after judgment: *St. John v. Rykert*, 10 S. C. 278. And see *Powell v. Peck*, 15 Ont. A. R. 138; *Grant v. People's Loan & Deposit Co.*, 18 S. C. 262.

Section 137 (Transfer by delivery). Transferror liable on consideration of transfer: *Merchants Bank v. Whidden*, 19 S. C. 53; *Mitchell v. Holland*, 16 S. C. 687.

Transferee must use reasonable diligence: *Conn v. Merchants Bank*, 30 U. C. C. P. 380.

Section 138 (Warranty by transfer). See *Lewis v. Jeffery*, M. L. R. 7 Q. B. 141; *Miller v. Daudelin*, 24 L. C. J. 208.

#### DISCHARGE OF BILL.

Section 139 (Payment). Taking note of new firm for goods sold to old: *Watts v. Robinson*, 32 U. C. Q. B. 362.

Credit in bank books; *Nightingale v. City Bank*, 26 U. C. C. P. 74; *Cleveland v. Exchange Bank*, 31 L. C. J. 126; *Goodall v. Exchange Bank*, M. L. R. 3 Q. B. 430.

Course of dealing: *Birkett v. McGuire*, S. C. Dig. 1030, reversing 7 Ont. A. R. 33.

Presumption by possession of note: *McKenzie v. Frizzell Ramsay*, A. C. 77; *Stephenson v. Miller*, 27 N. B. 42.

Acceptance of renewal: *Murray v. Gastonguay*, 13 N. S. 319.

Set-off: *Wood v. Ross*, 8 U. C. C. P. 299; *Smith v. Nicholson*, 19 U. C. Q. B. 27.

Compensation in Quebec: *Amazon Ins. Co. v. Quebec & G. P. S. S. Co.*, 2 O. L. R. 310; *Quintal v. Aubin*,

M. L. R. 1 S. C. 397; *Exchange Bank v. Canadian Bank of Commerce*, M. L. R. 2 Q. B. 476; *Riddell v. Goold*, M. L. R. 5 S. C. 170; *Lapage v. Hamel*, 19 R. L. 439.

Acceptance for accommodation of third party. Payment by drawer does not relieve acceptor: *Dill v. Wheatley*, 34 N. S. 526.

Discharge by agreement for payment by payee for whose accommodation bill was made: *Watson v. Porter*, 3 Kerr (N.B.) 137; *Peters v. Waterbury*, 24 N. B. 154.

Section 140 (Payment by drawer or indorser). Drawer's right to recover from acceptor: *Black v. Strickland*, 3 O. R. 217; *Goodall v. Exchange Bank*, M. L. R. 3 Q. B. 430.

Indorser who pays does not need conventional subrogation against prior parties: *Bove v. McDonald*, 16 L. C. R. 191.

Two indorsements for accommodation of maker. Last indorser paying can only recover half the amount from prior indorser: *Vallee v. Talbot*, Q. R. 1 S. C. 223.

No recourse against prior indorsers where no protest nor waiver: *Savaria v. Paquette*, Q. R. 20 S. C. 314.

Section 141 (Acceptor holding at maturity). Principle of section is "confusion" in civil law: Arts, 1198, 1199 C. C.

Section 142 (Renouncing rights). Payment of sum less than amount of bill is a discharge in Quebec, Ontario and Manitoba, which have adopted the civil law rule: *Mac-laren on Bills*, 3rd ed., 340.

Section does not apply where plaintiff's title to bill is obtained by assignment without indorsement: *Clonbrock Steam Boiler Co. v. Browne*, Q. R. 18 S. C. 575.

Time given to maker of note discharges indorser: *Shepley v. Hurd*, 3 Ont. A. R. 549; *Bedell v. Eaton*, 2 Kerr (N.B.) 217. But not delay or indulgence with no binding agreement to give time: *Wilson v. Brown*, 6 Ont. A. R. 87; *Merchants Bank v. Whitfield*, 2 Dor. 157; *Pelletier v. Brosseau*, M. L. R. 6 S. C. 331; *Guy v. Paré*, Q. R. 1 S. C. 443; *Le Jeune v. Sparrow*, 1 Terr. L. R. 384.

Reservation of rights: *Canadian Bank of Commerce v. Northwood*, 14 O. R. 207.

Time to indorser for whose accommodation note was made: *Leet v. Blumenthal*, Q. R. 13 S. C. 250; *Devanney v. Brownlee*, 8 Ont. A. R. 355; *Banque Nationale v. Betournay*, 18 R. L. 175.

And see *Merchants Bank v. McKay*, 15 S. C. 672; *Allison v. McDonald*, 23 S. C. 635.

**Sections 143, 144 (Cancellation).** Cancellation of signature: *Barthe v. Armstrong*, 5 R. L. 213; *Biggs v. Wood*, 2 Man. 272; *Isaacs v. Grothe*, 29 N. B. 420.

**Section 145 (Alteration).** Addition to note by holder of words "extended to Nov. 28th, '02," written on its face, discharged maker: *Mutual Life Assur. Co. v. McLaughlin*, 39 C. L. J. 630.

Two makers of note, one signing for other's accommodation. Third party signing after maturity a material alteration which discharges accommodation maker: *Carrique v. Beaty*, 24 Ont. A. R. 302, revg. 28 O. R. 175.

Insertion by holder of words "jointly and severally" before "promise to pay" in note signed by several persons, some being sureties for others, a material alteration which avoids note: *Banque Provinciale v. Arnoldi*, 2 Ont. L. R. 624; *Peoples Bank v. Wharton*, 27 N. S. 67. And also changing date of demand payable with interest though maker may benefit: *Boulton v. Langmuir*, 24 Ont. A. R. 618.

But mere correction of error by changing 1886 to 1896 is not: *McLaren v. Miller*, 36 C. L. J. 680.

Insertion of interest clause or rate—Intention—Expert evidence: *British Columbia Land and Investment Agency v. Ellis*, 6 B. C. 82; *Halcrow v. Kelly*, 28 U. C. C. P. 551.

Whether alteration is material or not is a question of law: *In re Commercial Bank*, 10 Man. 171. But question of the alteration itself is for the jury: *Domville v. Davies*, 13 N. S. 159; *Street v. Walsh*, 5 All. (N. B.) 343.

For other examples of material alterations see *MacLaren*, 3rd ed., 350-3.

#### ACCEPTANCE FOR HONOUR.

**Section 153 (Supra protest).** Person taking up for benefit of particular party obtains title of person from whom, not for whom, he receives it. He cannot indorse it over and all parties subsequent to him for whose honour it is taken up are discharged: *Cowan v. Doolittle*, 46 U. C. Q. B. 398; *MacArthur v. MacDowall*, 23 S. C. 571.

#### LOST INSTRUMENTS.

**Section 157 (Indemnity).** Offer to reimburse maker if note should be found not sufficient. Should be offer of security that maker should never be troubled: *Pillow & Hersey Co. v. L'Esperance*, Q. R. 22 S. C. 213.

Rule applies to case of non-negotiable note probably destroyed, as well as to a negotiable note merely mis-



laid: *Ib.*: *Cooley v. Dominion Building Soc.*, 24 L. C. J. 111.

And see *Rowan v. Ross*, 3 Que. P. R. 391.

Security may be given to satisfaction of Master: *Orton v. Brett*, 12 Man. 448.

In Quebec demand for security should be by exception dilatoire under art. 177 C. C. P.: *Brown v. Barden*, Q. R. 13 S. C. 151.

Bank not liable for note lost in mails—Offer of security: *Litman v. Montreal City and District Savings Bank*, Q. R. 13 S. C. 262.

Surrender of bill obtained by fraud: *McIntyre v. McGregor*, 21 C. L. T. Occ. N. 25; *Matthews v. Marsh*, 5 Ont. L. R. 540.

Decree for plaintiff without security when defendant did not demand it: *Abell v. Morrison*, 23 Gr. 109.

See also *Hudon v. Gervais*, Q. R. 7 S. C. 221.

#### CONFLICT OF LAWS.

Section 160 (Governing law). Application of law of a particular Province: *Cook v. Dodds*, 6 Ont. L. R. 608; *Hope v. Caldwell*, 21 U. C. C. P. 241; *Robertson v. Caldwell*, 31 U. C. Q. B. 402.

Note payable abroad governed by Canadian law: *Cloyes v. Chapman*, 27 U. C. C. P. 22; *Merchants Bank v. Stirling*, 13 N. S. 439.

Bill drawn on resident of Ontario governed by foreign law: *Story v. McKay*, 15 O. R. 169. And see *London & Brazilian Bank v. Maguire*, Q. R. 8 S. C. 358.

Section 162 (Duties of holder). Presentment, etc., governed by foreign law: *Howard v. Sabourin*, 5 L. C. R. 45; *Allen v. McNaughton*, 4 All. (N. B.) 234.

Section 164 (Due date). Note drawn in Montreal payable in New York matured on Sunday. Protest on Saturday according to New York law was regular: *Bank of America v. Copland*, 4 L. N. 154.

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#### PART III.

#### CHEQUES ON A BANK.

Reference in general is directed to the annotations in Parts II. and IV.

Section 165 (Nature of cheque). See the definition of a Bill of Exchange in s. 17. See also the annotations to s. 23, 2185<sup>25</sup>

*supra*, that section dealing with bills payable on demand. "Bank" here must be read in the light of the definition in s. 2 (c) of the Act. This excludes unincorporated banks or savings banks.

"A post-dated cheque is the same thing as a bill of exchange at so many days' date as intervene between the day of delivering the cheque, and the date marked upon the cheque." Per Kelly, C.B., in *Forster v. Mackreth*, L. R. 2 Exch. at p. 167.

Since the law was codified in England by the Bills of Exchange Act, 1882, it has been decided that a document in the form of a cheque addressed by one branch of a bank to another branch of the same bank would not fall within the meaning of a "cheque" as defined in this section: See *Brown v. National Bank*, 18 T. L. R. 669; *Capital and Counties Bank v. Gordon* [1903] A. C. 240.

And see *Maritime Bank v. Union Bank*, M. L. R. 4 S. C. 244.

A cheque should not be paid before the date it purports to be drawn: See per Abinger, C.B., in *Morley v. Culverwell*, 7 M. & W. at p. 181.

A cheque is not invalid because "it is antedated, or postdated, or that it bears date on a Sunday or other non-juridical day": See s. 27 *supra*. Nor is it invalid because it does not specify the value given, or the place where it is drawn or where it is payable: see *Ibid.* See also *Wood v. Stephenson*, 16 U. C. Q. B. 419.

As to whether a cheque is "money": See *Davidson v. Fraser*, 23 Ont. A. R. 439; *Gordon Mackay v. Union Bank*, 26 Ont. A. R. 155. In *Russell v. Sealy*, 2 N. Z. R. C. A. 498, it was held that an accepted cheque on a bank was equivalent to cash within the meaning of the New Zealand land regulations of 1853.

Restrictive endorsement of cheque: See *Exchange Bank v. Quebec Bank*, M. L. R. 6 S. C. 10.

A cheque operates as payment until it has been dishonoured: *Hughes v. Canada Permanent, etc., Society*, 39 U. C. Q. B. 221.

As to the law of cheques in general, see the following Canadian cases:—*Agriculture, etc., Assn. v. Federal Bank*, 6 Ont. A. R. 192; *The Queen v. Bank of Montreal*, 1 Ex. C. R. 154; *Boyd v. Nasmith*, 17 Ont. R. 40; *Gordon Mackay v. Union Bank*, 26 Ont. A. R. 155; *Maritime Bank v. Union Bank*, M. L. R. 4 S. C. 244; *Kenny v. Price*, 20 R. 1; *Dion v. Boulanger*, Q. R. 4 S. C. 358; *Dion v. Lachance*, Q. R. 14 S. C. 77; *Larraway v. Harvey*, Q. R. 14 S. C. 97; *Leipschitz v. Montreal Street Ry. Co.*, Q. R. 9 Q. B. 518; *Banque St. Hyacinthe v. Guilbault*, 8 Rev. de Jur. 115; *Re Commercial Bank*,

Banque d'Hochelaga's Case, 10 Man. R. 171; Knauth Nachod v. Stern, 30 N. S. R. 251; Imperial Bank of Canada v. Bank of Hamilton, [1903] A. C. 49; London Life Ins. Co. v. Molsons Bank, 5 Ont. L. R. 407; Silverstone v. Bank of Hochelaga, 21 C. L. T. (Occ. N.) 309; Marler v. Molsons Bank, 23 L. C. J. 293; Brown v. Livingstone, 21 U. C. Q. B. 438; City Bank v. Smith, 20 U. C. C. P. 93; Thorold Mfg. Co. v. Imperial Bank, 13 Ont. R. 330; Todd v. Gore Bank, 1 U. C. Q. B. 40; Wood v. Stephenson, 16 U. C. Q. B. 419; Blackley v. McCabe, 16 Ont. A. R. 295; Gore Bank v. Royal Canadian Bank, 13 Gr. 425; Dufresne v. Jacques Cartier Building Society, 5 R. L. 235; Dufresne v. St. Louis, 3 M. L. R. 4 S. C. 310; Banque Nationale v. City Bank, 17 L. C. J. 197; Pratt v. MacDougall, 12 L. C. J. 243; Baril v. Tétreault, 29 L. C. J. 208; Lord v. Hunter, 6 L. N. 310; Campbell v. Riendeau, Q. R. 2 Q. B. 604; Exchange Bank v. Quebec Bank, M. L. R. 6 S. C. 10; Marler v. Molsons Bank, 23 L. C. J. 293; Bank of Montreal v. Rankin, 4 L. N. 302; Nicholls v. Ryan, 2 R. L. 111; Rex v. Bank of Montreal, 10 Ont. L. R. 117 (affirmed Sup. Ct. Can.); London Life Ins. Co. v. Molsons Bank, 8 Ont. L. R. 238; Rose-Belford Printing Co. v. Bank of Montreal, 12 Ont. R. 544; Légaré v. Arcand, 33 C. L. J. 290.

**Section 165, s.-s. 2 (Presentment for payment).** A cheque does not operate as an assignment of funds in the hands of a bank available for its payment, and until acceptance the bank is not liable: *Caldwell v. Merchants Bank*, 26 U. C. C. P., 294. See provisions of s. 127. But, under clause (b) of s. 166, if the bank has refused to pay a cheque not presented within a reasonable time of its issue, although the drawer had the right at the time of such presentment, as between him and the bank, to have the cheque paid, the bank is liable to the holder of the cheque for the damage sustained by the drawer by reason of such refusal. (See notes to s. 166 *infra*.) See *Silverstone v. Bank of Hochelaga*, 21 C. L. T. (Occ. N.) 309; see, *contra*, *Marler v. Molsons Bank*, 23 L. C. J. 293. Cf. *Goirand's French Code of Commerce* (2nd ed.), p. 241, et seq.

A bank may pay, without special instructions therefor, any bills or notes made or accepted payable there by one of its customers: See *Jones v. Bank of Montreal*, 29 U. C. Q. B. 448; *Bank of England v. Vagliano*, [1891] A. C. 107.

A banker does not owe to the holder of a cheque the duty of knowing his customer's signature: See *Rex*

v. Bank of Montreal, 10 Ont. L. R. 117; Imperial Bank of Canada v. Bank of Hamilton, [1903] A. C. 49.

As to forged cheque payable to order: See s. 49, *supra*.

As to person drawing a cheque on bank where he has no account upon which he obtains goods or money: See *Crim. Code*, ss. 468 (r) and 405.

Cheque "payable at par" at a named bank—Effect of words—Liability—Right to charge back on dishonour: *Rose-Belford Printing Co. v. Bank of Montreal*, 12 Ont. R. 544.

(Improper payment). Marking by bank—Fraudulent alteration — Money paid under mistake of fact — Negligence — Notice of dishonour — Reasonable delay: *Imperial Bank of Canada v. Bank of Hamilton*, [1903] A. C. 49, affirming s. c. in 31 S. C. R. 344.

Cheque drawn for specific purpose—Payment—Application to other purposes—Notice—Trust: *Leipschitz v. Montreal Street Ry. Co.*, Q. R. 9 Q. B. 518.

Section 166 (Presentment—Reasonable time). Chalmers (*Bills of Exchange*, 6th ed., p. 250), says that this section is "new law." See the following cases as to "reasonable time:" *Re Oulton*, 15 N. B. R. 333; *Owens v. Quebec Bank*, 30 U. C. Q. B. 382; *Redpath v. Kolfage*, 16 U. C. Q. B. 433; *Boyd v. Nasmith*, 17 Ont. R. 40; *Blackley v. McCabe*, 16 Ont. A. R. 295; *Sawyer v. Thomas*, 18 Ont. A. R. 129; *Marler v. Stewart*, 2 Steph. Que. Dig. 111; *Campbell v. Riendeau*, Q. R. 2 Q. B. 604; *Légaré v. Arcand*, Q. R. 9 S. C. 122; *Lord v. Hunter*, 6 L. N. 310.

Section 167 (Bank's authority to pay). See notes to s. 165, s.-s. 2, *supra*.

Section 167 (a) (Countermand). See *Twibell v. London Suburban Bank*, W. N. 1869, p. 127; *Cohen v. Hale*, 3 Q. B. D. 371; *McLean v. Clydesdale Bank*, 9 App. Cas. 95; *Elliott v. Crutchley*, [1903] 2 K. B. 476.

Section 167 (b) (Death of customer). See *Colville v. Flanagan*, 8 L. Q. J. 225. This case is in apparent conflict with *Hewitt v. Kaye*, L. R. 6 Eq. 198, which decided that in order to constitute a good *donatio mortis causa* of the donor's own cheque on a banker, the cheque must be presented before donor's decease. In the latter case (p. 200), Lord Romilly, M.R., said: "A cheque is nothing more than an order to obtain a certain sum of money,

and it makes no difference whether the money is at a banker's or anywhere else. It is an order to deliver the money; and if the order is not acted upon in the lifetime of the person who gives it, it is worth nothing . . . The authority to act upon it is withdrawn by the donor's death." See, however, *Trunkfield v. Proctor* (1901) 2 Ont. L. R. 326, where it was held by Falconbridge, C.J., that an order signed by a mortgagor on his private banker with whom he had a deposit account, such order being payable to mortgagee or bearer, and which, although delivered by the mortgagor to his banker, was not paid during the lifetime of the mortgagor, was not a cheque but a bill of exchange, and was not revoked by the drawer (the mortgagor's) death. On appeal, the Divisional Court held that the transaction amounted either to an equitable assignment of the amount or a trust to pay over the same to the mortgagee, which became irrevocable on its being communicated to the parties and assented to by them.

#### CROSSED CHEQUES.

Section 168 (Dividend warrants). See the provisions of s. 7, *supra*.

*See*

Note.—In the 3rd ed. of Mr. Justice Maclaren's work on Bills, Notes and Cheques, it is stated (p. 397) that these provisions relating to crossed cheques "are copied from the Imperial Act, with the substitution of "bank" for "banker," as private bankers are not recognized by the Canadian Act. The practice of crossing cheques did not prevail in Canada before the Act, and it is not likely to be generally adopted now, as the drawer can protect himself by making a cheque payable to order, since our Parliament refused to adopt s. 60 of the Imperial Act, which relieves a bank from responsibility for the genuineness or authorization of the indorsement on cheques drawn upon it."

See the following English cases on "crossed cheques:" *National Bank v. Silke*, [1891] 1 Q. B. 435; *Bellamy v. Majoribanks*, 7 Exch. 389; *Smith v. Union Bank*, 1 Q. B. D. at p. 33; *Simmons v. Taylor*, 27 L. J. C. P. 248; *Capital & Counties Bank v. Gordon*, [1903] A. C. 240; *Carlton v. Ireland*, 5 E. & B. 765; *Hannan v. Armstrong*, 16 T. L. R. 236; *Clarke v. London and County Bkg. Co.*, [1897] 1 Q. B. 552; *Matthews v. Brown*, 10 T. L. R. 386; *Lacave v. Credit Lyonnais*, [1897] 1 Q. B. 148; *Great Western Ry. Co. v. London & County Banking Co.*, [1901] A. C. 414.

## PART IV.

## PROMISSORY NOTES.

Reference in general is directed to the annotations in Part II.

## Section 176 (Promissory notes defined).

Mr. Justice Maclaren (*Bills, Notes and Cheques*, 3rd ed., p. 406), after observing that this definition is an adaptation of that of a bill of exchange as stated in s. 17 *supra*, goes on to say that it does not change the law existing at the time of the passing of the Act "except that in Nova Scotia and New Brunswick notes payable otherwise than in money, which, under provincial Acts, were in certain respects placed on the same footing as promissory notes payable in money, and were generally called promissory notes, will no longer be so considered. A note payable to a specified person and not to his order, or to bearer, was considered a promissory note before the Act, but was not negotiable."

Reference at large is directed to the notes explanatory of the provisions of s. 17, *supra*, defining a bill of exchange. See also the following cases, where instruments more or less irregular in form were held to be valid promissory notes:

*Babineau v. Laforest*, 37 N. B. R. 156, affirmed 37 S. C. R. 521, where it was held that the following was a good promissory note:—

\$1,200. "Edmundston, N.B., July 12th, 1899.

"Received from N. P. B. the sum of twelve hundred dollars for which I am responsible, with interest at the rate of seven per cent. per annum, upon production of this receipt and after three months' notice. (Signed) F. L."

Church subscription list as several note of each subscriber: *Thomas v. Grace*, 15 U. C. C. P. 462.

Municipal debentures under C. S. L. C. c. 25, payable to bearer: *Eastern Townships Bank v. Compton*, 7 K. L. 446, *Macfarlane v. St. Cesaire*, M. L. R. 2 Q. B. 160.

Instrument worded:—"On demand ——— months after date, I promise to pay to A. B., or order," etc.: *Commercial Bank v. Allan*, 10 Man. R. 330.

A notarial act containing an engagement to pay a sum of money in any event and unconditionally: *Aurèle v. Durocher*, 5 R. L. 165.

A promise to pay in cash or goods at option of holder: *McDonell v. Holgate*, 2 Rev. de Leg. 29.

Instrument purporting to be given for a binder which was to remain property of the payee until paid for, the payee to do repairs, etc.: *Merchants Bank v. Dunlop*, 9 Man. R. 623. But see *Dominion Bank v. Wiggins*, 21 Ont. A. R. 275; *Imperial Bank v. Bromish*, 16 C. L. T. (Occ. N.) 21; *Bank of Hamilton v. Gillies*, 12 Man. R. 495; *Prescott v. Garland*, 34 N. B. R. 291.

And see *Kennedy v. Exchange Bank*, 30 L. C. J. 266; *Palliser v. Lindsay*, M. L. R. 6 Q. B. 311.

(Fraud). Where a signature was obtained ostensibly for a receipt, and a note was written over it. Held, that signer was not liable: *Banque Jacques Cartier v. Les-card*, 13 Q. L. R. 39.

And see *Jacques Cartier Bank v. Lalande*, Q. R. 20 S. C. 43.

As to intention of parties to make a promissory note when instrument not negotiable in form: See *Harvey v. Bank of Hamilton*, 16 S. C. R. 714.

Instrument in form of "I.O.U." sufficient as a negotiable instrument if a promise to pay can be spelled out of it: See *Gray v. Warden*, 29 U. C. Q. B. 535.

In Quebec a simple bon, "Good on demand," has been held in several cases as a good negotiable instrument. See *Hall v. Bradbury*, 1 Rev. de Leg. 180; *Beaudry v. Lafamme*, 6 L. C. J. 307; *Cridiford v. Bulmer*, M. L. R. 4 Q. B. 293; *Désy v. Daly*, Q. R. 12 S. C. 183.

But in the Ontario case of *Palmer v. McLennan*, 22 U. C. C. P. 565, the following: "Good to Mr. Palmer for \$850 on demand," was held not to conform to the requirements of a valid note.

Section 176, s.-s. 2 (Endorsement of note payable to maker's order). See *Burns v. Harper*, 6 U. C. Q. B. 509; *Ennis v. Hastings*, 9 N. B. R. 482; *Wallace v. Henderson*, 7 U. C. Q. B. 88. Cf. *Slater v. Laboree*, 10 Ont. L. R. 648; *Robinson v. Mann*, 31 S. C. R. 484.

Section 176, s.-s. 3 (Collateral security pledged). Cf. the provisions of s.-s. 2 of s. 17, which render a bill of exchange invalid "which orders any act to be done in addition to the payment of money." See notes thereto *supra*. This sub-section annuls the effect of the decisions to the contrary in *Hall v. Merrick*, 40 U. C. Q. B. 566; *Sutherland v. Patterson*, 4 Ont. R. 565.

Section 177 ("Inland" and "foreign"). See *Merchants Bank v. Stirling*, 13 N. S. R. 439.

Section 178 (Delivery). See s. 2 (f) of the Act. See also s. 40 and notes *supra*.

Section 179 (Joint and several note). "The Bills of Exchange Act does not deal with the consequences which are to flow from the character which, according to its provisions, is attached to the promise which a bill or promissory note contains, whether that of joint or joint and several liability. These consequences, in my opinion, fall to be determined according to the law of the province in which the liability is sought to be enforced, and inasmuch as in this province the common law rule as to joint contracts has been superseded by statutory enactment, R. S. O., 1897, c. 129, s. 15, the provisions of the latter are to govern:" Per Meredith, C.J., in *Cook v. Dodds* (1903) 6 Ont. L. R. at p. 613. And see *Toronto Dental Co. v. Maclaren*, 14 Ont. P. R. 89; *McDonald v. Gillis*, 33 N. S. R. 244; *Gardner v. Shaver*, 13 C. L. T. (Occ. N.) 287; *Bogart v. Robertson*, 11 Ont. L. R. 295.

For the law of the province of Quebec as to joint and several obligations, see Art. 1105, C. C. L. C., with annotations in *Beauchamp's Civil Code*, vol. I., p. 1077, et seq.

Section 179, s.-s. 2 (Individual promise). See *Creighton v. Allen and Fretz*, 26 U. C. Q. B. 627.

Section 180 (Demand note). See the English case of *Re George, Francis v. Bruce*, 44 Ch. D. 627, and cf. the following Quebec cases: *Dandurand v. Roulier*, 33 L. C. J. 167; *Bachand v. Lalumière*, Q. R. 21 S. C. 449; *Beaudry v. Renaud*, 8 Rev. de Jur. 490. See also *Thorne v. Scovil*, 4 N. B. R. 557.

Section 180, s.-s. 2 (Reasonable time). See the above cases, and *Commercial Bank v. Allan*, 10 Man. 330; *Merchants Bank v. Whitfield*, 2 Dor. 157; *Banque du Peuple v. Denicourt*, Q. R. 10 S. C. 428.

Section 181. See notes to above section.

Section 182. See notes to s. 180 *supra*.

Section 183 (Presentment—Liability of maker). See notes to ss. 85, 87 and 88, *supra*. See also *Merchants Bank v. Henderson*, 28 Ont. R. 360; *Sharp v. Power*, 33 N. S. R. 371; *Cunard v. Symon-Kaye*, 27 N. S. R. 344; *Miller v. Dodge*, 23 N. S. R. 191; *De la Chevrotiere v. Guilmet*, 9 L. N.



412; *O'Brien v. Stevenson*, 15 L. C. R. 265; *Mount v. Dunn*, 4 L. C. R. 348; *Mineault v. Lajoie*, 9 L. R. 382; *Croft v. Hamlin*, 2 B. C. R. 333.

Section 184 (Presentment to bind indorser). See ss. 85-93, with notes, *supra*. See also note to above section; and consider the affect of s. 92, *supra*, the provisions of which apply to promissory notes *mutatis mutandis*.

Section 185 (Maker's obligation — Estoppel). See *Perkins v. Beckett*, 29 U. C. C. P. 395; *Kinnard v. Tewsley*, 27 Ont. R. 398.

And see the provisions of s. 152, as to the analogous position of the acceptor of a bill; and see the provisions of s. 186. See also *Duthie v. Essery*, 22 Ont. A. R. 191, and *cf. Ayer, etc., Plough Co. v. Wallace*, 21 S. C. R. 256.

Section 187 (Protest of foreign notes). Cf. the provisions of s. 112 as to the necessity of protesting foreign bills of exchange.

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## CHAPTER 120.

### Interest Act.

**Section 2.** Rate of interest exorbitant — Oppression — Fraud:  
Goodhue v. Widdifield, 8 Gr. 531; Teeter v. St. John,  
10 Gr. 85.

**Section 4.** Provisions cannot be waived: Dunne v. Malone, 6 O.  
L. R. 484.

**Section 6.** Payment by instalments: Biggs v. Freehold Loan and  
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**Section 10.** Mortgage extending beyond five years: In re Parker,  
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## CHAPTER 121.

### Pawnbrokers' Act.

**Section 3.** A pawnbroker may charge a higher rate of interest than that mentioned in this section: *Regina v. Adams*, 8 Pr. (Ont.) 462.

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## CHAPTER 125.

### Trade Unions Act.

**Sections 2, 3, 32.** Union workmen may, in absence of intimidation, take measures to prevent non-union workmen from obtaining employment in union shops: *Perrault v. Gauthier*, 28 Can. S. C. R. 241.

Cf. *Hynes v. Fisher*, 4 O. R. 60; *Krug Furniture Co. v. Berlin Union*, 5 O. L. R. 463; *Centre Star v. Rossland*, 9 B. C. R. 190; *Le Roi Mining Co. v. Rossland Miners' Union*, 8 B. C. R. 370; *Branch v. Roth*, 10 O. L. R. 284; *Metallic Roofing Co. v. Amalgamated Sheet Metal Workers*, 5 O. L. R. 424, 10 O. L. R. 108; *Metallic Roofing Co. v. Jos  *, 12 O. L. R. 200.

**Section 4.** An action by a member of a trade union against certain members for unlawfully fining him, and in default expulsion to follow, is a violation of this section: *Beaulieu v. Cochrane*, 29 O. R. 151, 598.

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## CHAPTER 133.

### 【Adulteration Act.

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## CHAPTER 139.

### Supreme Court Act.

**Section 2 (d).** Meaning of expression "judgment": *C. P. R. v. Blain*, 36 Can. S. C. R. 159.

Power of Court to vary its own judgment: *C. P. R. v. Blain*, 36 Can. S. C. R. 159; *Penrose v. Knight*, Cam. Prac. 2; *Reeves v. Gerriken*, Cout. Dig. 1122; *Soulanges Election Case*, Cam. Prac., p. 2, *Smith v. Goldie*, Cout. Dig. 1123; *Rattray v. Young*, Cout. Dig. 1123; *Providence Ins. Co. v. Gerow*, 14 Can. S. C. R. 731; *Millard v. Darrow*, Cout. Dig. 1123; *Quebec & Ontario Ry. Co. v. Philbrick*, Cout. Dig. 1119; *Creese v. Fleischman*, 34 Can. S. C. R. 279; *Chambly Manufacturing Co. v. Willet*, 34 Can. S. C. R. 502; *Letourneau v. Carbonneau*, 35 Can. S. C. R. 701.

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Appeals in forma pauperis: Dominion Cartridge Co. v. Cairns, Cam. Prac. 357.

No power to increase security: Bonsack Machine Co. v. Falk, Cout. Dig. 46.

Section 76. Stay of execution: Veilleux v. Price & Ordway, Cout. Dig. 108.

Section 82. Dismissal for delay: City of Winnipeg v. Wright, 13 Can. S. C. R. 441.

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## CHAPTER 140.

### Exchequer Court Act.

Section 17 (Attorneys and solicitors). A solicitor who is a witness to a document cannot set up privilege: *Magee v. The Queen*, 3 Ex. C. R. 304.

Section 19. Exclusive original jurisdiction:

Contract—Engineer's certificate—Condition precedent: *Ross. v. The Queen*, 4 Ex. C. R. 390; *Goodwin v. The Queen*, 5 Ex. C. R. 293; 28 Can. S. C. R. 273; *Murray v. The Queen*, 5 Ex. C. R. 19; 26 Can. S. C. R. 203.

Services rendered to Parliamentary Committee: *Kimmit v. The Queen*, 5 Ex. C. R. 130.

Contract—Interpretation—Conditions not contemplated by parties: *Lainé v. The Queen*, 5 Ex. C. R. 103.

Goods purchased for and received by the Crown without formal contract—Liability for: *Henderson v. The Queen*, 6 Ex. C. R. 39; 28 Can. S. C. R. 425.

Informality, in same—Liability of Crown: *Woodburn v. The Queen*, 6 Ex. C. R. 12; 29 Can. S. C. R. 112.

*Vide*, *Demers v. The Queen* (1900), A. C. 103.

Services rendered as a Commissioner under R. S. C. c. 115; *Tucker v. The King*, 7 Ex. C. R. 351; 32 Can. S. C. R. 722.

Breach of contract occasioned by wrongful acts of the Crown's officer or agent: *Johnson v. The King*, 8 Ex. C. R. 360.

Grant of public domain: *Qu'Appelle & Long Lake Rly. v. The King*, 7 Ex. C. R. 105.

Notice of forfeiture of contract: *The King v. Stewart*, 32 Can. S. C. R. 483.

Expected profits from contract—Liability of Crown: *Gilbert Blasting Co. v. The King*, 33 Can. S. C. R. 21.

Promise by Crown officer as to increase of salary: *Robinson v. The King*, 9 Ex. C. R. 448.

Contract—Right to recover upon a quantum meruit: *Pigott v. The King*, 10 Ex. C. R. 248.

Negligence—Crown not a common carrier: *Nicholls Chemical Co. v. The King*, 9 Ex. C. R. 272.

Crown officer — Assignment of salary: *Powell v. The King*, 9 Ex. C. R. 364.

Interest, when allowed: *St. Louis v. The Queen*, 25 Can. S. C. R. 649; *Lainé v. The Queen*, 5 Ex. C. R. 103; *Henderson v. The Queen*, 28 Can. S. C. R. 425.

Vide, also, *Audette's Exchequer Court Act*, pp. 74, 75, 76, 82, 106-110.

## Section 20. Exclusive original jurisdiction—

(a) Expropriation: *Cripps on Compensation*, 5th ed., 101.

Prospective capabilities of lands: *Mayor of Montreal v. Brown*, L. R. 2 App. Cas. 168; *Paint v. The Queen*, 18 Can. S. C. R. 718.

Potential Advantages: *Charland v. The Queen*, 16 Can. S. C. R. 721.

Farm crossing: *Vezina v. The Queen*, 17 Can. S. C. R. 1; *Guay v. The Queen*, 17 Can. S. C. R. 30.

Railway—Damages by operation: *Vezina v. The Queen*, 17 Can. S. C. R. 1.

Increased rate of insurance: *Straits of Canseau Railway v. The Queen*, 2 Ex. C. R. 113.

Unity of estate—Severance: *Cowper Essex v. Local Board of Acton*, L. R. 14 App. Cas. 153; *Paint v. The Queen*, 2 Ex. C. R. 149.

Enhancement of value—Compensation: *The Queen v. Murray*, 5 Ex. C. R. 69.

Owner left in possession of building: *The Queen v. Clarke*, 5 Ex. C. R. 64.

Lessor and lessee—Basis of compensation: *Gibbon v. The Queen*, 6 Ex. C. R. 430.

Fact that lands more valuable to the Crown than defendants not admissible in evidence: *The Queen v. Harwood*, 6 Ex. C. R. 420.

Lessor and lessee—Covenant to build on demised premises—Compensation: *The King v. Young*, 7 Ex. C. R. 282.

Land taken not covered by plan filed by the Crown: *The King v. Harris*, 7 Ex. C. R. 277.

Basis of compensation: *The King v. Sedger*, 7 Ex. C. R. 274.

Compulsory taking—Compensation—ten per cent. added: *Symonds v. The King*, 8 Ex. C. R. 319.

Tenant's improvements — Compensation: *McGoldrick v. The King*, 8 Ex. C. R. 169.

Prospective value: *Turnbull Real Estate Co. v. The King*, 33 Can. S. C. R. 677.



Actual value—Compensation: *Symonds v. The King*, 8 Ex. C. R. 319.

Lessee of water power—Compensation for loss of profits: *Beach v. The King*, 9 Ex. C. R. 287; 37 Can. S. C. R. 259.

Section 20 (b) (Property injuriously affected): *Cripps on Compensation*, 5th ed., p. 131.

Injurious affection—Destruction of highway—Title to bed of river: *The Queen v. Moss*, 5 Ex. C. R. 30; 26 Can. S. C. R. 322.

Injurious affection: *Robinson v. The Queen*, 4 Ex. C. R. 439; 25 Can. S. C. R. 692.

Also *Penny v. The Queen*, 4 Ex. C. R. 428.

Injurious affection—Deprivation of access: *Magee v. The Queen*, 5 Ex. C. R. 391.

Injurious affection—Damages from a drain: *Davidson v. The Queen*, 6 Ex. C. R. 51.

Injurious affection—Deprivation of access to street: *McQuade v. The King*, 7 Ex. C. R. 318.

Injurious affection—Erosion—Acceleration by public work: *Graham v. The King*, 8 Ex. C. R. 331.

Injurious affection—Subsidence of land—Release of claim: *Vroom v. The King*, 8 Ex. C. R. 373.

Injurious affection—Closing street: *MacArthur v. The King*, 8 Ex. C. R. 245; 34 Can. S. C. R. 570.

Injurious affection: *The Queen v. Armour*, 31 Can. S. C. R. 499.

Section 20 (c). Death or injury by a public work—By negligence: *City of Quebec v. The Queen*, 24 Can. S. C. R. 420.

Death or injury—Rifle range not a public work: *Larose v. The Queen*, 6 Ex. C. R. 425; 31 Can. S. C. R. 206.

Government railway — Death — Right of action: *Grenier v. The Queen*, 6 Ex. C. R. 276; 30 Can. S. C. R. 42; *Alliance Association v. The Queen*: 6 Ex. C. R. 76; *McKay v. The Queen*, 6 Ex. C. R. 1.

Damages — Negligence — Discretion as to railway gates: *Harris v. The King*, 9 Ex. C. R. 206.

Negligence of Crown officer: *Wheatley v. The King*, 9 Ex. C. R. 222.

Government canal—Negligence of Crown servants: *McKay v. The Queen*, 6 Ex. C. R. 1.

Negligence must be on a public work and by an officer of the Crown within the scope of his duties: *Alliance Assurance Co. v. The Queen*, 6 Ex. C. R. 76.

Public work—the Minister not “an officer of the Crown” for whose negligence the Crown is liable: *McHugh v. The Queen*, 6 Ex. C. R. 374.

Death or injury—Basis of compensation: *McDonald v. The King*, 7 Ex. C. R. 216; *Letourneux v. The Queen*, 7 Ex. C. R. 1; 33 Can. S. C. R. 335.

Crown not liable for non-repair of public work: *Hamburg Packet Co. v. The King*, 7 Ex. C. R. 150; 33 Can. S. C. R. 252.

Negligence in construction of an elevator in a post office: *Finigan v. The King*, 9 Ex. C. R. 472.

Negligence — Aggravation of injury by unskilful treatment: *Vinet v. The King*, 9 Ex. C. R. 352.

Negligence—Doctrine of common employment in Manitoba: *Ryder v. The King*, 9 Ex. C. R. 330; 36 Can. S. C. R. 462.

Negligence—Barge wintering in Lachine Canal: *Gagnon v. The King*, 9 Ex. C. R. 189.

Section 20 (d) Claim “arising under any law of Canada:” *Henry v. The King*, 9 Ex. C. R. 417.

Section 20.—Interest:

*The Queen v. The Beatrice*, 5 Ex. C. R. 9, 160; *The Queen v. Murray*, 5 Ex. C. R. 69; *The Queen v. Clarke*, 5 Ex. C. R. 64; *The Queen v. Wallace*, 6 Ex. C. R. 264; *Drury v. The Queen*, 6 Ex. C. R. 204.

Section 20.—Vide also Audette’s *Exchequer Court Act*, pp. 77-81.

Sections 21, 22. Sale of Dominion lands—Mines and minerals: *Canadian Coal and Colonization Co. v. The Queen*, 3 Ex. C. R. 157.

Crown lands—Letters patent for—Setting aside: *Fonseca v. Attorney-General of Canada*, 17 Can. S. C. R. 612.

Crown domain—Disputed territory—License to cut timber: *Bulmer v. The Queen*, 23 Can. S. C. R. 488.

Federal and Provincial rights—Title to lands in railway belts, B. C.: *The Queen v. Demers*, 3 Ex. C. R. 293.

Dominion Lands Act—Railway subsidy—Reservation of minerals: *Calgary & Edmonton Railway v. The King*, 33 Can. S. C. R. 673; reversed (1904) A. C. 765.

Dominion lands—Transfer of—Proprietary right—Vesting at a future date: *Attorney-General for Manitoba v. Attorney-General for Canada* (1904) A. C. 799.

Section 23. Vide notes to Patent Act, c. 69; Copyright Act, c. 70; Trade Mark and Design Act, c. 71.

Section 27. Vide notes to Winding-up Act, c. 144.

Section 31. The King can choose his Court: *Farwell v. The Queen*, 22 Can. S. C. R. 553.

Injunction on information by the Crown: *The Queen v. Fisher*, 2 Ex. C. R. 365.

Injunction against the Crown: *Magee v. The Queen*, 3 Ex. C. R. 304, and 4 Ex. C. R. 63.

Lands conveyed to the Crown on condition: *Magee v. The Queen*, supra, followed in *Wright v. The Queen*, Ex. Ct. (1895), unreported—on appeal the Supreme Court was equally divided.

Cancellation of Land Patent: *The Queen v. Thomas*, 2 Ex. C. R. 246.

Crown's prerogatives: *Maritime Bank v. Receiver-General of New Brunswick* (1892), A. C. 437; *Farnell v. Bowman*, 12 App. Cas. 643; *Maritime Bank v. The Queen*, 17 Can. S. C. R. 657; *The Queen v. Farwell*, 22 Can. S. C. R. 553.

Sections 36 and 37.—Practice and Procedure:

Arbitration—Rule of Court: *Dominion Atlantic Railway Co. v. The Queen*, 5 Ex. C. R. 420.

Judgment by default: *The Queen v. Connolly*, 5 Ex. C. R. 397.

Res judicata: *The Queen v. St. Louis*, 5 Ex. C. R. 330; 25 Can. S. C. R. 649.

Amount assessed once for all: *Davidson v. The Queen*, 6 Ex. C. R. 51; *City of Montreal v. McGee*, 30 Can. S. C. R. 582; *Gareau v. Montreal Street Railway*, 31 Can. S. C. R. 463; *Anctil v. Québec*, 33 Can. S. C. R. 347.

Security for costs — Delay: *Boston Rubber Shoe Co. v. Boston Rubber Co.*, 7 Ex. C. R. 47; 32 Can. S. C. R. 315.

Security for costs: *Atlantic & Lake Superior Ry. v. The King*, 8 Ex. C. R. 189.

Remedy — Declaration of right: *Qu'Appelle and Long Lake Railway Co. v. The King*, 7 Ex. C. R. 105.

Estoppel—Crown not estopped by statements or reports of its officers: *Robert v. The King*, 9 Ex. C. R. 21.

Section 47. Vide notes to s. 20 (a), (b).

Sections 48 and 49. Vide notes to s. 19.

Section 50. Vide notes to s. 20 (a), (b).

Section 53. Interest against the Crown, vide notes to s. 20.

Section 82. "Any judgment upon any demurrer:" *Toronto Type Foundry v. Mergenthaler*, 36 Can. S. C. R. 593.

Extending time for bringing appeal: *Clarke v. The Queen*, 3 Ex. C. R. 1; *MacLean v. The Queen*, 4 Ex. C. R. 257; *Vaughan v. Richardson*, 17 Can. S. C. R. 703; *Queen v. Woodburn*, 29 Can. S. C. R. 112; *Alliance v. The Queen*, 6 Ex. C. R. 126.

Section 83. Vide notes to Supreme Court Act, s. 46.

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## CHAPTER 141.

### Admiralty Act.

Sections 3, 4 and 5. Collision cases:

Collision—Action—Towage contract—Joinder of defendants—Company—Liability limited—25 and 26 Vict. (Imp.) c. 63—Merchant Shipping Amendment Act, 1862—Navigation of Canadian waters; 31 Vict. c. 58, s. 12—Motion for judgment—Findings of jury—Weight of evidence—Practice: *Sewell v. B. C. Towing Co. and the Moodyville Sawmill Co.*, 9 Can. S. C. R. 527.

Collision—Inland navigation—Negligence—Agony of collision—Damages—Party in fault—Answering signals: *Robertson v. Wigle, The St. Magnus*, 16 Can. S. C. R. 720.

Collision—Narrow channels—Navigation—Lights—Negligent look-out—Vessel lying in channel—Anchor light—Damages: *Owen v. Odette, The "Minnie Morton,"* Cass. Dig. (2 ed.) 519.

Collision—Rules of the road—Narrow channel—Navigation, rules of—R. S. C. c. 79, s. 2, arts. 15, 16, 18, 19, 21, 22 and 23—"Crossing" ships—"Meeting" ships—"Passing" ships—Breach of rules—Presumption of fault—Contributory negligence—Moiety of damages—36 and 37 Vict. (Imp.) c. 85, s. 17—Manœuvres in "agony of collision": *The "Cuba" v. McMillan*, 26 Can. S. C. R. 651.

Collision at sea—Negligence—Defective steering gear—Question of fact—Interference with decision of local judge in admiralty: *S.S. "Santanderino" v. Vanvert et al.*, 23 Can. S. C. R. 145.

Collision—Ship at anchor—Anchor light—Look-out—Weight of evidence—Credibility—Findings of trial judge—Negligence: *Dominion Coal Co. v. S. S. "Lake Ontario,"* 32 Can. S. C. R. 507.

Collision—Steamer and sailing vessel—Collision. Arts. 20, 22, 23, 25—Liability: *Brine v. The "Tiber,"* 6 Ex. C. R. 402.

Collision—Undue speed—Navigation during fog: *The "Pawnee" v. Roberts*, 32 S. C. R. 509.

Collision—Right of way: Georgian Bay Navigation Co. v. The “Shenandoah” and The “Crete,” 8 Ex. C. R. 1; 33 Can. S. C. R. 1.

Collision—Negligence—Ship at wharf—Regulations: Bank Shipping Co. v. The “City of Seattle,” 9 Ex. C. R. 146.

Collision—Fault of ship owned by Crown—No liability: Paul v. The King, 9 Ex. C. R. p 245.

Collision—Fishing vessels—Sufficiency of anchor light—Careless navigation—Costs—Witness fees—Parties: Conwell v. The “Reliance,” 7 Ex. C. R. 181; 31 Can. S. C. R. 653.

Collision—Barque approached by steamer—Manœuvres: Smith v. The “Empress,” 21 Occ. N. 430; 8 B. C. R. 122; 7 Ex. C. R. 143.

Collision—Between foreign vessels—Jurisdiction of Canadian Court—Arrest in Canadian waters—Inevitable accident—Look-out: St. Clair Navigation Co. v. The “D. C. Whitney,” 6 O. W. R. 302 (appealed to Supreme Court).

Collision—Breach of regulations—Minor breach not contributing—Lights—Negligence: The “Birgitte” v. Forward, The “Birgitte” v. Moulton, 9 Ex. C. R. 339.

Collision—Damage to wharf—Negligence: Boak v. The “Baden,” 8 Ex. 343.

Collision—Fog—Speed—Damages: Wineman v. The “Hiawatha,” 7 Ex. C. R. 446.

Collision—In foreign waters—Application of foreign rules—“Safe and Practicable”—“Narrow channel”—Harbour: Lovitt v. The “Calvin Austin,” 9 Ex. C. R. 160; The “Calvin Austin” v. Lovitt, 25 Occ. N. 78; 35 Can. S. C. R. 616.

Collision—Liability—Imperial regulations: Hamburg Packet Co. v. Desrochers, 23 Occ. N. 214; 8 Ex. C. R. 263.

Collision—Navigation—Narrow channels—“White law,” rule 24—Right of way: Davidson v. Georgian Bay Navigation Co., 23 Occ. N. 79, 33 Can. S. C. R. 1.

Collision—Negligence—Harbour—Regulations: Bank Shipping Co. v. The “City of Seattle,” 24 Occ. N. 363, 10 B. C. R. 513.

Narrow channel—Rule of the road—Look-out—Meeting ships—Collision—Special rule of port: Steamship “Cape Breton” v. Richelieu and Ontario Navigation Co., 36 Can. S. C. R. 564 (affirmed in the Privy Council).

Maritime law—Crossing ships—Admiralty rules:  
The “Albano” v. “Parisian,” 37 Can. S. C. R. 284  
(appealed to His Majesty in council).

Collision—Negligence: S. S. “Chittagong” v. S. S.  
“Kostroma,” (1901) A. C. 597.

#### SALVAGE CASES.

Salvage—Arrest—Payment into Court—Release—  
Appeal—Security—Foreign owner—Extravagant claim:  
Vermont S. S. Co. v. The “Abby Palmer,” 8 Ex. C.  
R. 462, 10 B. C. R. 383.

Salvage—Quantum of remuneration—Mail steamer  
—Sailing ship: Pickford and Black S. S. Co. v. The  
“Foster Rice,” 9 Ex. C. R. 6.

Rescue of vessel stranded—Proceeding in rem—  
Salvage—Special contract—Action by agents of owners  
—Parties: In re “Marion Teller,” Clark v. Odette, Cass.  
Dig. (2 ed.) 521.

Services rendered to the Crown: Paul v. The King,  
reporter’s note, 9 Ex. C. R. p. 271.

Salvage—Compensation—Onus probandi: S. S.  
Baku Standard v. S. S. Angèle (1901), A. C. 549.

Ship salvaged property of Crown—Young, master of  
Furnesia v. The Scotia (1903), A. C. 501.

#### SEAMEN’S WAGES.

Seaman’s wages—Actions in rem—Wages—Equal-  
ity—Priority—Costs—Pro rata payment of subsequent  
claims: Munsen v. The “Comrade,” Saunders v. The  
“Comrade,” Dickson v. The “Comrade,” 7 Ex. C. R.  
331.

Seaman’s wages—Arrest on telegram—Rescue—  
Contempt of Court—Ignorance of law: In re The  
“Ishpeming,” 8 Ex. C. R. 379.

Seaman’s wages—Jurisdiction of Exchequer Court  
to entertain claim for wages under \$200—Admiralty Act  
—Foreign ship—Costs: Gagnon v. The “Savoy,” Dion  
v. The “Polino,” 25 Occ. N. 87; 9 Ex. C. R. 238.

#### NECESSARIES.

Necessaries—Action in rem against ship: Rochester  
& Pittsburg Coal & Iron Co. v. “The Garden City,” 7  
Ex. C. R. pp. 34 & 94.

Necessaries—Foreign vessel—Authority of master  
—Liability of owner: “Wallace” v. Bain, 8 Ex. C. R.  
p. 205.

## OTHER CASES.

Maritime law—Action by owner of unregistered mortgage against freight and cargo—Jurisdiction: Strong v. "Atalanta," 5 Ex. C. R. p. 57.

Revenue law—Penalties—Jurisdiction: The Queen v. Allen, 5 Ex. C. R. p. 144.

Maritime lien—Right of the Crown to enforce lien—Writ of extent—Costs: The Queen v. "Windsor," 5 Ex. C. R. p. 223.

Wrongful arrest of a ship by the Crown: The Queen v. The "Beatrice," 5 Ex. C. R. 160; Vroom v. The "King," 8 Ex. C. R. p. 373.

Personal injury done by ship—Jurisdiction of Admiralty Court—Negligence—Sufficiency of machinery—Fellow-workmen—Evidence—Hospital expenses—Particulars—Summons: Wyman v. The "Duart Castle," 6 Ex. C. R. 387.

Unbuoyed anchor of moored vessel—Custom of port—Ordinary caution—Rule of the road—Collision with anchor—Contributory negligence—Damages: McCallum v. Odette, 7 Can. S. C. R. 36.

Judicial sale—Purchaser refusing to complete—Re-sale—Liability of purchaser for difference in price—Statute of Frauds: Hackett v. The "Blakeley," In re Jones, 8 Ex. C. R. 327, 9 B. C. R. 430.

Pilotage dues—Liability of barge—"Every ship which navigates": Corporation of Pilots for the Harbour of Quebec v. The "Grandee," 22 Occ. N. 428; 8 Ex. C. R. 54, 79, vide also,

Action in rem—Jurisdiction of Exchequer Court of Canada—Arrest—Account—Co-owners: Cope v. The "Raven," 9 Ex. C. R. 404.

Arrest—Wrongful—By the Crown: The Queen v. The Beatrice, 5 Ex. C. R. 160.

Foreign vessel—Foreign judgment—Comity of Courts—Account between co-owners: Michado v. The "Hattie and Lottie," 9 Ex. C. R. 11.

Foreign vessel—Illegal fishing—Seizure of vessel—Evidence of vessel's position: Rex v. The "Kitty D.," 24 Occ. N. 261; 34 S. C. R. 673. (Reversed in the Privy Council.)

Illegal fishing—Foreign vessel—Evidence—Condemnation: Rex v. The "Samoset," 25 Occ. N. 128, 9 Ex. C. R. 348.

Maritime law—Foreign vessel within British waters—Fishing within three mile limit—License—Forfeiture—R. S. C. c. 94, s. 3—Evidence—Onus probandi: The "Henry L. Phillips" v. The Queen, 25 Can. S. C. R. 691.



Appeal—Certiorari—Merchants' Shipping Act, 1854  
—Distressed seaman—Recovery of expenses—"Owner  
for time being"—Proof of ownership and payment:  
The Queen v. S. S. "Troop" Co., 29 Can. S. C. R. 662.

Customs duties—Duties on goods—Foreign built  
ships—Customs Tariff Act, 1897, s. 4: The King v.  
Algoma Central Ry. Co., 32 Can. S. C. R. 277.

Canadian waters—Three mile zone—Fishing by for-  
eign vessels: The "North" v. The "King," 37 Can.  
S. C. R. 385.

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## CHAPTER 142.

### Petition of Right Act.

Vide notes to Exchequer Court Act, R. S. C. 140, ss.  
19, 20.

# ANNOTATIONS.

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## CHAPTER 143.

### Expropriation Act.

Vide Notes to Exchequer Court Act, R. S. C. 140, s. 20.

# ANNOTATIONS.

## CHAPTER 144.

### Winding-Up Act.

#### INTERPRETATION.

Section 2 (b) ("Company"). The Act applies to trading companies doing business in Canada wheresoever incorporated. See *Allen v. Hanson* (1890) 18 S. C. R. 667. See note to s. 6 *infra*.

Section 2 (e) ("Court"). In Quebec "the Superior Court" means the Superior Court for the district where the head office for the company is situate: *Dupont v. Compagnie de Moulin* (1888) 11 L. N. 225. A local Judge of the Supreme Court of B. C. is not a "Court" as used herein: *In re Kootenay Brewing Company*, 7 B. C. R. 131. Cf. the provisions of secs. 109 and 110.

"The intention of Parliament in submitting all proceedings instituted for the winding up of insolvent companies under these Acts to the jurisdiction of the ordinary courts in the respective provinces of the Dominion, was to leave those proceedings or cases to be dealt with in those courts by the machinery and course of procedure ordinarily in use in those courts in *consimili casu*." Per Gwynne, J., in *Shoolbred v. Clarke*, 17 S. C. R. at p. 268.

An instructive case on the delegation of judicial powers will be found in *Re Queen City Refining Co.*, 10 Ont. P. R. 415, decided under s.-s. 2 of s. 77 R. S. C., 1886, c. 129, which has been repealed.

Court of Chancery will not, in general, interfere to oust the jurisdiction of insolvent court by winding up the affairs of an insolvent company: *McNeil v. Reliance Mutual Fire Ins. Co.*, 26 Gr. 567. As to "adverse proceedings" affecting the estate: See *Clarke v. Union Fire Ins. Co.*; *Caston's Case*, 10 Ont. P. R. 339.

(Injunction of foreign court). Order by Judge in Bankruptcy in England enjoining plaintiffs from proceeding in the High Court of Justice for Ontario: See *Maritime Bank v. Stewart*, 13 Ont. P. R. 86. And see *Re Central Bank*, 20 Ont. R. 214.

(Judge in Chambers). The order for the winding-up of a company, upon petition, may be made by a Judge in Chambers: *Re Toronto Brass Co.*, 18 Ont. P. R. 248.

**Section 2 (g) "Contributory."** Similar interpretation clause is found in 25 & 26 Vict. c. 89, s. 74 (Imp.).

See the following English cases as to interpretation:—*Oakes v. Turquand*, L. R. 2 H. L. 325; *In re Anglesea Colliery Co.*, L. R. 1 Ch. 555; *In re Scottish Petroleum Company*, L. R. 23 Ch. Div. 413; *Ex parte Dunlop*, in *re Anglo-French, etc., Trading Co.*, 8 L. T. 846; *Langer's Case*, 18 L. T. 67; *Bright v. Hutton*, 3 H. L. Cas. 341; *Norris v. Cottle*, 2 H. L. Cas. 647; *Ex parte Palmer*, Ir. R. 2 Eq. 573; *Davies' Case*, in *re Valparaiso Water Works Co.*, 26 L. T. 650.

The following is a list of Canadian cases on the meaning of the term "contributory":—*In re Queen City Refining Co.*, 10 Ont. R. 264; *Tilsonburg Agricultural Co. v. Goodrich*, 8 Ont. R. 565; *In re London Speaker Co.*, 16 Ont. A. R. 508; *Re Standard Fire Ins. Co.*, 7 Ont. R. 448; 12 Ont. A. R. 486; 12 S. C. R. 644; *Re Cole and Canada Fire, etc., Co.*, 8 Ont. R. 92; *Re Thunder Hill Mining Co.*, 4 B. C. R. 61; *Ex parte Bibby*, in *re Enterprise, etc., Co.*, 1 B. C. R. (pt. II.) 94; *Common v. McArthur*, 29 S. C. R. 239; *In re Owen Sound Dry Dock Co.*, 21 Ont. R. 349; *In re Hess Mfg. Co. v. Edgar v. Sloan*, 23 S. C. R. 644; *Re Union Fire Ins. Co.*, *McCord's Case*, 21 Ont. R. 264; *Stevens v. London Steel Works Co.*, *Delano's Case*, 15 Ont. R. 75; *Re Central Bank and Hogg*, 19 Ont. R. 7; *Hood v. Eden*, 36 S. C. R. 476; *Maritime Bank v. Troop*, 16 S. C. R. 456; *In re Central Bank*, *Yorke's Case*, 15 Ont. R. 625.

And see ss. 48 et seq., *infra*.

**Section 2 (h) ("Winding-up order").** Under the English Acts it has been held that a winding-up order is not equivalent to an adjudication in bankruptcy (*Ex parte Anderson*, in *re Agra and Masterman's Bank*, L. R. 3 Eq. 337; *In re London Cotton Mfg., Co.*, 14 L. T. 135); nor is it evidence of the insolvency of a company (*Hickie's Case*, 36 L. J. Ch. 809). And see notes to sec. 11 *infra*.

**Section 2 (i) ("Capital stock").** See notes to ss. 38-42 and 45 of the Companies Act (R. S. C. 1906, c. 79) *ante*.

**Section 2 (j) ("Creditor").** It was held in *Gurofski v. Harris* (27 Ont. R. 201), that a plaintiff suing for a tort is not a "creditor" within the meaning of the Ontario statute as to preferences.

Section 3. The provisions of this section, being in the nature of insolvent legislation, are *intra vires* of the Dominion Parliament: See *Shoolbred v. Clarke*, 17 S. C. R. 265; s. c. sub nom. *Re Clarke and Union Fire Ins. Co.*, 14 Ont. R. 618, 16 Ont. A. R. 161; *Eldorado Union Store Co.*, 18 N. S. R. 514; *Re British Columbia Iron Works Co.*, 6 B. C. R. 536; *Re Lake Winnipeg, etc., Trading Co.*, 7 Man. R. 255.

And see notes to s. 6, *infra*.

Section 3 (a) ("Unable to pay its debts"). There is no wider meaning to be given to the words "unable to pay his debts in full," than to "insolvent circumstances," but both expressions refer to the same financial condition, that is, to a condition in which a debtor is placed when he has not sufficient property subject to execution to pay all his debts if sold under legal process at a sale fairly and reasonably conducted: *Dominion Bank v. Cowan*, 14 Ont. R. 465. Affidavit of president that company "unable to pay its debts in full," with no comparative statement of assets and liabilities—Held insufficient evidence of insolvency: *Re Lake Winnipeg, etc., Trading Co.*, 7 Man. R. 255.

The fact that all the assets are either mortgaged, or under warehouse receipts, is not alone sufficient to render a debtor insolvent: *Ibid*.

A demand being made under s. 4, and the time for payment having elapsed without the demand having been complied with, and no reason given why payment is not made, under such circumstances the company must be deemed insolvent: *Re Cushing Sulphite Fibre Co.*, 37 N. B. R. 254.

There is some conflict of authority in Canada as to whether or not a creditor who seeks to bring his case within clause (a) must first show that he has proceeded in the manner provided by sec. 4—in other words, that the company, after demand in writing and after the period limited in s. 4, has neglected to pay or otherwise satisfy the creditor in respect of his claim. The affirmative was held by Taylor, C.J., in *Re Rapid City Farmers' Elevator Co.*, 9 Man. R. 574; and he distinguished the case from *Re Flagstaff Mining Co.*, L. R. 20 Eq. 268, and *Re Globe New Patent Iron Co.*, L. R. 20 Eq. 337, on the ground that the provisions of s. 4 were not those found in the English Act. *Re Qu'Appelle Valley Farming Co.*, 5 Man. R. 160, was an earlier decision to the same effect by Taylor, C.J. On the other hand, in the Quebec case of *McKay v. L'Association Coloniale de Construction, etc.*, 13 R. L. 383, it was held that the

creditor petitioning was not obliged to prove that he had made a demand for payment conformably to s. 4. However, in Ontario, on a petition before Magee, J., in *Chambers, Re Ewart Carriage Works Limited* (1904) 8 Ont. L. R. 527, the opinion of Taylor, C.J., in the two Manitoba cases cited was concurred in. See also *Re Briton Medical and General Life Association*, 11 Ont. R. 478; *Re Abbott-Mitchell Iron & Steel Co.*, 2 Ont. L. R. 143.

**Section 3 (c) (Statement).** Held, *intra vires* of the Parliament of Canada: *Re Lake Winnipeg, etc., Trading Co.*, 7 Man. R. 255.

“Inability to meet its liabilities” means liabilities to creditors, as distinguished from liabilities to shareholders: In *re United Canneries of British Columbia, Ltd.*, 23 C. L. T. (Occ. N.) 254.

**Section 3 (d) (Acknowledgment of insolvency).** Must be alleged in petition if relied on: See *Re Briton Medical, etc., Assn.*, 11 Ont. R. 478.

To enable a company to be wound up, it is not sufficient for the company to appear by counsel and admit insolvency, and consent to be wound up. The facts shewing insolvency must be disclosed in the material on which the petition is based: *Re Grundy Stove Co.*, 7 Ont. L. R. 252.

Judgment and execution returned *nulla bona*, not an acknowledgment of insolvency hereunder: See *Re Qu’Appelle Valley Co.*, 5 Man. R. 160. Nor is the non-appearance of company to oppose petition for winding-up order: *Re Lake Winnipeg, etc., Trading Co.*, 7 Man. R. 255.

**Section 3 (e) and (f) (Fraud, etc.).** The affidavit supporting petition for winding-up order must state the facts which constitute the fraud charged: See *Re Qu’Appelle Valley Co.*, 5 Man. R. at p. 165.

**Section 3 (g).** Conveyance by company of its assets to another company without consent of its creditors, and without satisfying their claims, sufficient ground for winding-up order: See *Re Qu’Appelle Valley Co.*, 5 Man. R. at p. 165.

**Section 3 (h) (Execution).** Held, that in computing the time under this sub-section, the day fixed for the sale is exclusive, and therefore, where an unsatisfied writ was in the sheriff’s hands on the 30th of December, and the sale was fixed for the 3rd January, it was a writ remain-

ing "unsatisfied till within four days of the time fixed for the sale," and that the company was insolvent within the meaning of the Act: *Re Lake Winnipeg, etc., Trading Co.*, 7 Man. R. 255.

**Section 4 (Unable to pay debts—Demand).** The petitioner alleged that the company was unable to pay its debts as they became due, within the meaning of s. 3 (a), but gave no evidence of a demand in writing, and neglect by the company to pay within sixty days thereafter, as required by this section:—Held, that the petition must be dismissed, unless amended and fresh evidence given, since this section specifies the only way of proving a case under clause (a) of s. 3: *In re Ewart Carriage Works, Ltd.*, 8 Ont. L. R. 527. See *Re United Canneries of B. C. Limited*, 23 C. L. T. (Occ. N.) 254. And see this point more fully discussed in notes to s. 3, *supra*.

As to form of "demand": See *In re Abbott-Mitchell Iron, etc., Co.*, 2 Ont. L. R. 143.

(Non-compliance with demand—Effect of). Where the demand is not complied with, and the time limited has elapsed, and no reason given why payment is not made, the company must be deemed insolvent: *Re Sulphite Fibre Co.*, 37 N. B. R. 254.

(Secured creditor). A secured creditor can make the demand mentioned herein without valuing his security (under s. 76) in such demand: *Re Cushing Sulphite Fibre Co.*, 37 N. B. R. 254.

**Section 5 (Commencement of Winding-up).** Winding-up commences at time of the service of the notice mentioned herein: See *Fuches v. Hamilton Tribune Co.*, 10 Ont. P. R. 409.

(Notice of petition—Voluntary liquidation). Where notice has been given to the shareholders summoning them to a special general meeting, with the object of placing a company, which is not insolvent, in voluntary liquidation, and accompanied by powers of attorney by which the shareholders may authorize their representation at such meeting, and a resolution is passed authorizing liquidation, there is no necessity for a further notice to the shareholders of the presentation of the petition to the Court: *In re North-West Cattle Co.*, 5 Que. P. R. 30.

(Voluntary winding-up): See *Re Ontario Forge & Bolt Co.*, 25 Ont. R. 407; *Re Maple Leaf Dairy Co.*, 2 Ont. L. R. 590; *Re Oro Fino Mines, Ltd.*, 7 B. C. R. 388; *Re Union Fire Insurance Co.*, 7 Ont. A. R. 783.



## APPLICATION OF ACT.

Section 6. As to constitutionality of the Act, see notes to s. 3, *supra*.

Application to companies incorporated under provincial legislation: See *Shoolbred v. Clark*, 17 S. C. R. 265; *Re Union Fire Ins. Co.*, 14 Ont. R. 618; 16 Ont. A. R. 161; 17 S. C. R. 265; *Eldorado Union Store Co.*, 18 N. S. R. 514; *Re British Columbia Iron Works Co.*, 6 B. C. R. 536; *Re Ontario Forge and Bolt Co.*, 25 Ont. R. 407; *Re Iron Clay Brick Mfg. Co.*, *Turner's Case*, 19 Ont. R. 113; *Re Atlas Loan Co.*, 3 Ont. W. R. 604.

Application to foreign companies: While all the provisions of the Act are not applicable to foreign companies, those which do apply are *intra vires* and should be acted upon: See *Allen v. Hanson* (1890) 18 S. C. R. 667 (*Ruling Case*). See also *Re Briton Medical, etc., Life Assn.*, 12 Ont. R. 441.

Section 7 (Excepted corporations). As to insolvent railways, see *Exchequer Court Act*, c. 140, ss. 26 and 27, *ante*.

## PART I.

## GENERAL.

Section 8 (Winding-up bank). An insolvent bank, whether in process of liquidation or not at the time it is sought to bring it under the Winding-up Act, must be wound-up with the preliminary proceedings specified in ss. 150-156 of Part II. *infra*: See *Mott v. Bank of Nova Scotia*, *In re Bank of Liverpool*, 14 S. C. R. 650.

Section 9 (Insurance company). Canadian policy-holders petitioning for distribution of deposit of foreign life insurance company in hands of Minister of Finance: See note to s. 162 *infra*.

## WINDING-UP ORDER.

Section 11 (Form of order). An order directing the winding-up of a company instead of the business of the company is good: *Re Cushing Sulphite Fibre Co.*, 37 N. B. R. 254.

A valid winding-up order must contain the appointment of a liquidator: *Re Union Fire Ins. Co.*, 13 Ont. A. R. 268. See *s.c. sub nom. Shoolbred v. Union Fire Ins. Co.*, 14 S. C. R. 624.

(Intention of Act). The Act, like the Insolvent Act of 1875, which provided for the winding-up of incorporated companies, is intended to be put into operation at the instance of creditors only: *In re Union Ranch Co. of Canada, Limited*, 15 Ont. R. 307. (But see the terms of s. 12, *infra*.)

(Lack of assets.) A winding-up order will not be granted where there are no assets, and the petitioning creditor would, therefore, get nothing by the order: *In re Georgian Bay, etc., Aqueduct Co.*, 29 Ont. R. 358; *In re Okell & Morris Fruit Preserving Co.*, 9 B. C. R. 153.

Section 11 (a). After the issue of the order for winding-up a joint stock company incorporated under the Companies Act, a shareholder cannot avoid his liability as a contributory by setting up defects or illegalities in the organization of the company: *Common v. McArthur*, 29 S. C. R. 239.

Section 11 (b). (Resolution for Winding-up). See *Re Union Fire Ins. Co.*, 7 Ont. A. R. 783; *In re North-west Cattle Co.*, 5 Que. P. R. 30.

Section 11 (c) ("Insolvent"). Where the insolvency of a company is admitted the court has no discretion to refuse to grant a winding-up order on the petition of a creditor who has a substantial interest in the estate, although the company has made a voluntary assignment for the benefit of its creditors, and most of them are willing that the winding-up should be under such assignment: *Re William Lamb Mfg. Co. of Ottawa*, 32 Ont. R. 243. But see *Re Maple Leaf Dairy Co.*, 2 Ont. L. R. 590, and *Re Strathy Wire Fence Co.*, 8 Ont. L. R. 186. See also *In re Union Ranch Co. of Canada*, 15 Ont. R. 307.

Insolvency must be shewn in material upon which the petition is based: *Re Grundy Stove Co.*, 7 Ont. L. R. 252.

And see notes to secs. 3 and 14.

Section 11 (d). (Stock and Assets). A winding-up order will not be granted where there are no assets, and the petitioning creditor would, therefore, get nothing by the order: *In re Georgian Bay, etc., Aqueduct Co.*, 29 Ont. R. 358; *In re Okell & Morris Fruit Preserving Co.*, 9 B. C. R. 153.

Section 11 (e). ("Just and Equitable"). See *In re Florida Mining Co.*, 9 B. C. R. 108.

## APPLICATION FOR ORDER.

**Section 12. (Execution creditor).** A subsequent execution creditor may file a petition for a winding-up order: *Re Lake Winnipeg, etc., Trading Co.*, 7 Man. R. 255.

(Unsecured creditors). A company will not be compulsorily wound-up at the instance of unsecured creditors, where it is shown that nothing can be gained by a winding-up: *In re Okell & Morris Fruit Preserving Co.*, 9 B. C. R. 153; *In re Georgian Bay, etc., Aqueduct Co.*, 29 Ont. R. 358.

(Secured creditor). Not obliged to value his security on making a demand under sec. 4, *supra*: *Re Cushing Sulphite Fibre Co.*, 37 N. B. R. 254.

**Section 13. (Application by petition).** Several petitions—Choice exercised by the Court: *In re Estates Limited*, 8 Ont. L. R. 564. And see notes to sec. 14, *infra*.

(Service of petition). Service of a petition for a winding-up order on an assignee for creditors of a company is not service upon the company as required by sec. 13, sub-sec. 2, *infra*, such assignee not being an agent of the company within Ont. Con. Rule 159, at all events when the president and directors are readily accessible, and have given no express authority to the assignee to accept such service: *Re Rodney Casket Co.*, 12 Ont. L. R. 409. And see note to s.-s. 2 hereof, *infra*.

(Execution creditor). A subsequent execution creditor may file a petition for a winding-up order: *Re Lake Winnipeg, etc., Trading Co.*, 7 Man. R. 255.

(Bondholder—Right to petition). Bond secured by trust mortgage—Right of holder to petition: See *Re Cushing Sulphite Fibre Co.*, 37 N. B. R. 254.

Costs of petitioning: See *In re Albion Ironworks Co.*, 24 C. L. T. (Occ. N.) 300; *Re Enterprise Hosiery Co.*, 4 Ont. W. R. 56; *In re Estates Limited*, 8 Ont. L. R. 564; *Re Manitoba Milling Co.*, 8 Man. R. 426; *Re Commercial Bank of Manitoba*, 13 C. L. T. (Occ. N.) 381.

(Practice). In Ontario a petition may be presented to a Judge in Chambers: *Re Toronto Brass Co.*, 18 Ont. P. R. 248. And see secs. 109, and 125.

And see the following cases: *Re Lake Winnipeg, etc., Trading Co.*, 7 Man. R. 255; *Re Qu'Appelle Valley Farming Co.*, 5 Man. R. 160; *Re Rapid City Farmers' Elevator Co.*, 9 Man. R. 574; *Re Oro Fino Mines*, 7 B. C. R. 388; *Leduc v. Kensington Land Co.*, Q. R. 16 S. C. 213; *Re Toronto Brass Co.*, 18 Ont. P. R. 248.

Section 13, s.-s. 2 (Notice of application). See *In re Maritime Wrapper Co.*, 35 N. B. R. 682. And see *Re Arnold Chemical Co.*, 2 Ont. L. R. 671; *In re Rodney Casket Co.*, 12 Ont. L. R. 409; *Re Eldorado Union Store Co.*, 18 N. S. R. 514; *Stimson v. Northwest Cattle Co.*, Q. R. 14 K. B. 279.

Section 14. (Discretion of Court). The Court has a discretion to grant or withhold a winding-up order under this section: *Re Maple Leaf Dairy Co.*, 2 Ont. L. R. 590. (But see *Re William Lamb Mfg. Co.*, 32 Ont. R. 243).

Where the assets of the company were small, and the creditors had almost unanimously entered upon a voluntary liquidation under the Ontario Assignments Act, a petition for a compulsory winding-up order was refused: *Re Maple Leaf Dairy Co.*, 2 Ont. L. R. 590; *Re Strathy Wire Fence Co.*, 8 Ont. L. R. 186; *Wakefield Rattan Co. v. Hamilton Whip Co.*, 24 Ont. R. 107.

A company will not be compulsorily wound up at the instance of unsecured creditors, where it is shown that nothing can be gained by a winding-up: *In re Okell & Morris Fruit Preserving Co.*, 9 B. C. R. 153; *In re Georgian Bay, etc., Aqueduct Co.*, 29 Ont. R. 358.

Creditors may show cause against the making of a winding-up order: *Re Lake Winnipeg Transportation, etc., Co.*, 7 Man. R. 255.

And see notes to sec. 24, *infra*.

#### STAYING PROCEEDINGS.

Section 18. (Restraining execution by judgment creditors). See *Re Eldorado Union Store Co.*, 18 N. S. R. 514.

(Extra-Provincial Company). While there is jurisdiction to restrain any action or proceeding, including executions, even beyond the ordinary territorial jurisdiction of the Court, in a case where the sheriff had proceeded with the sale of the company's lands under execution, and executed a deed of the same to the purchaser, it was held that the Court under the Winding-up Act had no jurisdiction to make an order summarily declaring the sale void: *In re Tobique Gypsum Co.*, 6 Ont. L. R. 515. And see *Phillips v. Canada Cork Co.*, 7 Que. P. R. 223. But see *Lake Superior Native Copper Co.*; *Re Plummer*, 9 Ont. R. 277.

Where claimant did not seek to enforce any rights against the company by a suit but rather to ascertain his rights, leave was granted: *Re Lake Winnipeg, etc., Trading Co.*, 7 Man. R. 602.

The Court will not allow its administration of the assets to be interfered with by other proceedings affect-

ing the estate: see *Clarke v. Union Fire Ins. Co.*; *Caston's Case*, 10 Ont. P. R. 339. But see the provisions of sec. 22.

Section 19. (Staying winding-up proceedings). See *Re Alpha Oil Co.*, 12 Ont. P. R. 298; *Re Sun Lithographing Co.*, 24 Ont. R. 200; *Cloyes v. Darling*, 16 R. L. 649.

#### EFFECT OF WINDING-UP ORDER.

Section 20. (Assets). After winding-up order made the power of collecting the assets of company is vested solely in the liquidator: *Shaver v. Cotton*, 23 Ont. A. R. 426, *Bank of Hochelaga v. Garth*, M. L. R. 2 S. C. 201.

(Taxes). After winding-up order, property cannot be sold for taxes due: *School Commissioners of Hochelaga v. Montreal Abattoir Co.*, M. L. R. 3 Q. B. 116.

(Judgment). After winding-up order, judgment recovered against company is void: *Keating v. Graham*, 26 Ont. R. 361; *Graham v. Casselman*, Q. R. 4 S. C. 91. And see *Molleur v. La Compagnie du Pulpe*, M. L. R. 3 S. C. 273. See also *Shaver v. Cotton*, 23 Ont. A. R. 426.

(Rent). Landlord must prove claim like any other creditor: see *Fuches v. Hamilton Tribune Co.*, 10 Ont. P. R. 409.

(Executions levied before winding-up order). Compare the cases of *Dawson v. Moffatt*, 11 Ont. R. 484; *Re Bokstal*, 17 Ont. P. R. 201; and *McLean v. Allen*, 14 Ont. P. R. 84, decided under Ont. Creditors' Relief Act.

(Executions levied after winding-up order). See s. 23.

(Winding-up in foreign court). A fire insurance company incorporated in the State of New York and carrying on business in Canada, cannot be allowed to do so after proceedings have been taken, according to the law of its domicile, with a view of winding-up the affairs of the company, and that irrespective of what the result of the proceedings may be as to the solvency or insolvency of the company: *Douglas v. Atlantic Mutual Life Ins. Co.*, 25 Gr. 379.

Section 22. (Leave to proceed). Where claimant did not seek to enforce any rights against the company, but rather to ascertain his rights, leave to proceed was granted: *Re Lake Winnipeg, etc., Trading Co.*, 7 Man. R. 602.

Secured creditor may obtain leave to sue: *In re Lenora Mount Sicker Copper Co.*, 9 B. C. R. 471.

See also *In re Lake Superior Native Copper Co.*; *Re Plummer*, 9 Ont. R. 277; *In re Giant Mining Co.*, 10 B. C. R. 327.

An action cannot be brought against the liquidator without leave of the Court: *Robillard v. Blanchet*, Q. R. 19 S. C. 383; *Soucy v. Electric Printing Co.*, 5 Que. P. R. 105; *Marcotte v. Turcot*, 4 Que. P. R. 342.

Leave to sign final judgment against a foreign company in process of liquidation abroad, but doing business and having assets in Ontario, was granted under Rule 80 Ont. J. A.: see *Plummer v. Lake Superior, etc., Co.*, 10 Ont. P. R. 527.

#### APPOINTMENT OF LIQUIDATORS.

Section 24. (Creditors' Choice). The choice of the creditors, they having the chief and immediate concern in realizing the assets, should be adopted: *Re Central Bank of Canada*, 15 Ont. R. 309. Preference, however, should be given to one who is neither a creditor nor a shareholder, the general rule being that it is desirable that liquidators should be disinterested persons: *Ibid*.

Upon a contest for the appointment of a liquidator in a winding-up proceeding it is desirable to follow the rules for guidance to be found in the English cases. The Court abstains from laying down any such rule as that the nominee of the petitioning creditor should have a preference. The Court will consider the condition of affairs to ascertain what parties are most interested in the due administration of the estate in liquidation, and other things being equal, will act upon their recommendation: *Re Alpha Oil Co.*, 12 Ont. P. R. 298. Conduct of the proceedings was given to a later petitioner, a creditor for money paid, in preference to an earlier one shown to be an employee of and in close touch with the company: *Re Estates Limited*, 8 Ont. L. R. 564. And see *Wakefield Rattan Co. v. Hamilton Whip Co.*, 24 Ont. R. 107.

In the English case of *Re Western Canada Oil, etc., Co.* (L. R. 17 Eq. 1), it was decided that a creditor of a company who cannot be paid without winding-up proceedings is entitled *ex debito justitiae* to a winding-up order.

Manager of business of principal creditor—Notice to shareholders: *Re Guelph Linseed Oil Co.*, 2 Ont. W. R. 1151.

(Sheriff as liquidator). See *Alpha Oil Co. v. Donnelly*, 12 Ont. P. R. 515.

Power of appointment of liquidator cannot be delegated: see *Re Union Fire Ins. Co.*, 13 Ont. A. R. 268; 14 S. C. R. 624.

Section 27. (Notice of appointment). It is a substantial objection to a winding-up order appointing a liquidator to the estate of an insolvent company, that such order has been made without notice to the creditors, contributories, shareholders or members of the company as required by this section. An order so made was set aside, and the petition therefor referred back to the Judge to be dealt with anew: *Shoolbred v. Union Fire Ins. Co.*, 14 S. C. R. 624, reversing s. c. sub nom. *Re Union Fire Ins. Co.*, 13 Ont. A. R. 268; and sub nom. *Re Clarke v. Union Fire Ins. Co.*, 10 Ont. R. 489.

See section 124, *infra*.

The appointment of a liquidator without a previous notice to creditors, contributories and shareholders or members, in the manner and form prescribed by the Court, is null and void. Section 124, *infra*, does not extend to dispensing with notice of appointment of a liquidator as required herein: *Stimson v. North-west Cattle Co.*, Q. R. 14 K. B. 279.

Section 29. (Provisional liquidator). See *Re Union Fire Ins. Co.*, 13 Ont. A. R. 268.

Section 30. (Incorporated company). A bank was appointed liquidator to another insolvent bank: *Forsythe v. Bank of Nova Scotia*; *In re Bank of Liverpool*, 18 S. C. R. 707.

Section 32. (Resignation and removal). An application to remove a liquidator was granted upon the following grounds: (1) The majority of creditors requested the change; (2) The proposed liquidators would act without remuneration; (3) The business connection of one of the proposed liquidators would be beneficial to the company: *Re Assiniboine Valley Stock Co.*, 6 Man. R. 105. See also *Cloyes v. Darling*, 16 R. L. 649; *Exchange Bank v. Campbell*, 15 R. L. 373.

(Discharge of liquidator). See *Hogaboom's Case*, 24 Ont. A. R. 470; *Plender v. Fitzgerald*, M. L. R. 5 Q. B. 446.

(Liquidator of bank). Where liquidators passed their final accounts and paid into Court the balance in their hands, and that balance had by inadvertence been paid out of Court by parties not entitled to it, it was held that the Receiver-General (Minister of Finance),

had such an interest in the fund that he might, even before three years from the time of payment in had expired, apply to the Court for an order for repayment into Court of the fund: *Hogaboom's Case*, 24 Ont. A. R. 470; 28 S. C. R. 192.

See also the Insolvency sections (125-131) of the Bank Act (Ch. 29 ante), also sections 115 and 116 thereof.

#### POWERS AND DUTIES OF LIQUIDATORS.

Liquidators are officers of the Court: *Re Central Bank*, *Henderson's Case*, 17 Ont. R. 110.

**Section 34 (a). (Suits).** In an action by the liquidator of an insolvent company against the directors, specifying several alleged illegal acts, amongst which was that of payment of dividends out of capital, the Master in Chambers, at the instance of two of the defendants, who claimed indemnity over against the shareholders for any amounts so paid, issued the usual third-party order, under Con. Rule 209, directing that two out of a large number of shareholders should be joined as third-party defendants, as a test case, but no order for their representing the class was obtained, though it was stated that if they appeared such order would be applied for. On appeal by the plaintiff and the third parties, to a Judge in Chambers, the order was set aside. An appeal therefrom by the defendants to a Divisional Court was dismissed, the plaintiff undertaking that any moneys realized in the action would not be distributed without notice to the defendants and without leave therefor being obtained from the local Judge: *London and Western Trusts Co. v. Loscombe* (1906), 13 Ont. L. R. 34. See also *City of Montreal v. Gagnon*, Q. R. 25 S. C. 178.

**Section 34 (c). (Sale to directors).** Upon appointment of liquidator the powers of directors cease, and their fiduciary relations to the company are at an end. Hence, a sale to them by liquidator is valid: see *Chatham National Bank v. McKeen*, 24 S. C. R. 348. But see sec. 31.

In liquidation proceedings the power to sell the assets is by the Act vested in the liquidator, not in the Court, though the liquidator must obtain the approval of the Court as a condition of exercising the power of sale: *In re Canada Woollen Mills, Limited*; *Long's Appeal*, 9 Ont. L. R. 367.



Section 37 (Compromise with creditors). This enactment is not repealed by sec. 63, *infra*: see *Ward v. Mullin*, Q. R. 14 K. B. 49.

(Remission of debts). A curator has no power to remit debts due to the insolvent company, except upon a compromise: *Re Laurie Engine Co.*, 7 Que. P. R. 431.

Section 38 (Leave of Court). Judge may allow the liquidator of insolvent company to exercise his powers under the Winding-up Act without further authorization, in all cases where the amount is under \$100: *In re Victoria-Montreal Fire Insurance Co.*, 4 Que. P. R. 315.

Misappropriation by liquidator—Bond—Liability of sureties: *In re Army and Navy Clothing Co.*, 3 Ont. L. R. 37.

#### REMUNERATION OF LIQUIDATORS.

Section 40, s.-s. 2. The intention of this section is that the remuneration is not necessarily to be increased because three are to be paid instead of one. The recompense for services is usually a percentage based on the time occupied, work done, and responsibility imposed, and when fixed goes to the liquidator, and, if more than one, is distributed amongst them: *Re Central Bank of Canada*, 15 Ont. R. 309.

Costs of alleged contributories payable out of assets—Deficiency of—Costs of petitioning creditors—Liquidators' costs and compensation—Priority: *In re Baden Machinery Co.*, 12 Ont. L. R. 634.

And see *Re Commercial Bank of Manitoba*, 9 Man. R. 342; *Exchange Bank v. Campbell*, 15 R. L. 373; *Re Assiniboine Valley Co.*, 6 Man. R. 184; *Re Saskatchewan Coal Mining Co.*, 6 Man. R. 593; *Re Central Bank, Lye's Claim*, 22 Ont. R. 247.

#### CONTRIBUTORIES.

Section 48. (Meaning of term.) Contributory does not include a mere stranger who is a debtor to company, but contemplates one who is liable to contribute in the character of a partner or member: *Re Central Bank, York's Case*, 15 Ont. R. 625. And see Interpretation Clauses, sec. 2 (g), *supra*.

Section 51. (Shareholder's liability). Held, that a former holder of bonus shares, which he had before winding-up transferred to persons entitled to hold them as fully paid up, is not liable to be placed on the list of contributories in

respect to them, unless subjected to such liability by the Act under which the company was created or some Act relating thereto.

Semble, however, that such a shareholder, if a director, commits a breach of trust in being a party to the allotment of the shares as fully paid up, as well as in putting them off on his transferees to the prejudice of the company as fully paid-up shares; and such a case is a proper one for an order under the Winding-up Act for contribution by him by way of compensation in respect of such breach of trust: *In re Warton Beet Sugar Co., Freeman's Case* (1906), 12 Ont. L. R. 149.

(Estoppel). H. applied for preference stock, and at the time of his application there were shares of common stock which might have been allotted to him, but the secretary undertook to allot to him shares of invalid preference stock, on which H., the applicant, made certain payments in ignorance of the irregularities, and also attended meetings of shareholders and moved resolutions thereat:—Held, that H. could not be charged as a contributory, as there was no contract for the preference shares in fact, and that if there was any holding of himself out as a shareholder by H. it was not under circumstances which could affect creditors or create any change of position to their prejudice: *Re Pakenham Pork Packing Co.*, 12 Ont. L. R. 100.

(Withdrawal of written subscription). The respondent, by a writing under seal, subscribed for one share in the capital stock and agreed to pay \$100 for it, 10 per cent. on application, 15 per cent. on allotment, 25 per cent. two months thereafter, and the balance as the directors might deem advisable. It was arranged that the company should draw upon the respondent for the amount payable on application. On the next day, and before anything was done by the company, the respondent wrote to the company, cancelling his subscription. The company thereafter drew on the respondent for the 10 per cent., but, although pressed to do so, the respondent declined to accept the draft. A resolution was then passed by the directors "that the stock now subscribed be allotted, and notice sent to each subscriber that we are drawing on them for their second payment." The company did not draw on the respondent for the second payment, nor was he notified of the allotment, but his name was recorded in the book required to be kept by the company under the Ontario Companies Act, as a shareholder for one share. Held, that while the instrument signed by the respondent was not a mere offer which he could withdraw before acceptance, yet the

company had never accepted or intended to accept him as a shareholder unless the down payment of 10 per cent. was made, and, after the refusal to make that payment, they made it evident that they had not accepted him, and even if they had accepted him, it was not shewn that the acceptance was communicated to him; and he was not, therefore, liable as a contributory: *Re Provincial Grocers, Limited: Calderwood's Case*, 10 Ont. L. R. 705.

See also on the point of revoking a sealed offer for shares: *Nelson Coke and Gas Co. v. Pellatt* (1902), 4 Ont. L. R. 481.

(Application for shares not under seal). See *Re Canadian Tin Plate Decorating Co.: Morton's Case*, 12 Ont. L. R. 594.

(Payment by contributory.) Shares in a joint-stock company incorporated under R. S. C. c. 119, were issued to applicants, they paying an amount equal to the face value of the shares, but receiving back from the company a portion of the price as alleged consideration for services to be rendered by them to the company at a future date. Held, in a judgment creditor's action, that the shares to the extent of the amounts so allowed must be treated as unpaid shares. . . . Where without any transfer in writing being executed, certificates of shares issued under the above circumstances were surrendered by the original holder to the company, and new certificates were issued at his request by the company to the alleged transferee, it was held that having regard to the provisions of this section and the by-laws of the company, that the original holder had not divested himself of liability to a judgment creditor of the company suing under sec. 39 of Chap. 79: *Union Bank v. Morris* (1900), 27 Ont. A. R. 396, affirmed 31 S. C. R. 594. See, however, *Jones v. Miller* (1893), 24 Ont. R. 268, and *Neelon v. Town of Thorold* (1893), 22 S. C. R. 390; *Re Standard Fire Ins. Co., Caston's Case* (1885), 7 Ont. R. 448, 12 S. C. R. 644.

Sections 52-60 (Bank trafficking in shares—Defence of contributory). Banks and Banking—Winding-up—Contributory—Defence of trafficking in shares—Transfers within one month of suspension: *Re Central Bank, Henderson's Case*, 17 Ont. R. 110; *Re Central Bank, Baine's Case*, 16 Ont. R. 293. See Bank Act, sec. 130.

Liquidator increasing obligations of contributories—Invalid calls: *In re Victoria and Montreal Fire Ins. Co.*, Q. R. 26 S. C. 282.

("Formal allotment"). In the absence of a formal allotment, where a subscriber for a share was debited on the company's stock-ledger with one share, was placed on the "shareholders' list," was drawn upon for the first payment of 10 per cent., and had paid the draft, he was held liable as a contributory under R. S. O. 1897 ch. 191, sec. 26: See *Hill's Case* (1905), 10 Ont. L. R. 501.

(Adequacy of consideration for shares). In winding-up proceedings under the Dominion Act the master has no authority to enquire into the adequacy of the consideration for shares with a view to placing the holder on the list of contributories: *In re Hess Mfg. Co.*: *Edgar v. Sloan*, 23 S. C. R. 644. And see *Hood v. Eden*, 36 S. C. R. 476.

Cost of alleged contributories payable out of assets—Deficiency of assets—Liquidators' costs—Compensation—Costs of petitioning creditors—Priority: *In re Baden Machinery Co.*, 12 Ont. L. R. 634.

Preference shares—Common shares—Allotment of shares—Delegation of directors' powers—Ratification—Estoppel: *Re Pakenham Pork Packing Co.*, 12 Ont. L. R. 100.

Director—Invalid transfer of stock—Contributory: See *Re Publishers' Syndicate*: *Paton's Case*, 5 Ont. L. R. 392.

Stock issued in pursuance of agreement prior to formation—Cash payment—Order making shareholders contributories rescinded: *Hood v. Eden*, 36 S. C. R. 476.

Stock issued as "fully paid-up"—Part payment—Set-off by shareholder: *Re Wiarton Beet Sugar Mfg. Co.*: *Alexander McNeill's Case* (1905), 10 Ont. L. R. 219.

And see generally: *Re North Bay Supply Co.*, 6 Ont. W. R. 85; *Re Wakefield Mica Co.*, 5 Ont. W. R. 94; *Re Sprouted Food Co.*, 6 Ont. W. R. 514; *Re Harris, Campbell & Bryden Furniture Co.*, 5 Ont. W. R. 514; *Re Co-operative Cycle & Motor Co.*, 1 Ont. W. R. 778.

#### MEETINGS OF CREDITORS.

Section 63. (Meeting ordered by Court). This enactment does not operate to repeal the provisions of s. 37, *supra*: See *Ward v. Mullin*, Q. R. 14 K. B. 49.

Notices of meeting—Form—Time for issuing—Objections: *Re Sun Lithographing Co.*, 5 Ont. W. R. 510.

## CREDITORS' CLAIMS.

Section 69. Shareholders contributing to reserve fund cannot rank as creditors upon the assets of the company: *Re Atlas Loan Co. Claims on Reserve Fund*: 9 Ont. L. R. 468.

Priority of Crown as creditor: See *The Queen v. Bank of Nova Scotia*, 11 S. C. R. 1; *Re Elmsdale Co.*, 24 C. L. T. (Occ. N.) 341.

Section 70 ("Clerks," etc.): See *Re American Tire Co., Dingman's Case*, 2 Ont. W. R. 29; *Re Ritchie-Hearn Co.*, 6 Ont. W. R. 474.

Section 71. (Set-off). Claim of lessor on company's assets—Against a claim of a person upon the assets of a company in liquidation, based upon a lease, the company cannot set off damages which it alleges it has suffered at the hands of the claimant; and allegations of such damages will be struck out upon demurrer: *In re Montreal Cold Storage, etc., Co.: Mullin's Claim*, 4 Que. P. R. 341.

(Set-off by contributory). A contributory of an insolvent company, who is also a creditor, cannot set off the debt due to him by the company against calls made in the course of winding-up proceedings in respect of the double liability imposed by the Banking Act, R. S. C. 1906, c. 29, s. 125; See *Maritime Bank v. Troop*, 16 S. C. R. 456. And see *Re Wiarton Beet Sugar Mfg. Co.: McNeill's Case*, 10 Ont. L. R. 219.

And see *Liquidators of Maritime Bk v. Troop*, 16 S. C. R. 456; *Ings v. Bk. of P. E. Island*, 11 S. C. R. 265; *Re Bolt & Iron Co., Livingstone's Case*, 14 Ont. R. 211, 16 Ont. A. R. 397; *Howell v. Dominion of Canada, etc., Co.*, 37 U. C. Q. B. 484; *Re Central Bank, Cayley's Case*, 17 Ont. R. 122; *Re Central Bank, Lye's Claim*, 22 Ont. R. 247.

Section 73. (Proving claims, etc.). Claim for money lent—Power to borrow—Delegation of powers: *In re Farmers' L. & S. Co.: Ex parte Home S. & L. Co.*, 21 C. L. T. (Occ. N.) 383.

(Rent). Landlord must prove claim for: *Fuches v. Hamilton Tribune Co.*, 10 Ont. P. R. 409.

Life Insurance Co.—Proof of claim of unmaturing policy-holder: *Re Merchants' Life Assn., Vernon Cases*, 1 Ont. L. R. 256.

Claims of creditors—Contestation—Particulars—Time: *Re Montreal Cold Storage, etc., Co.: Mullin's Claim*, 4 Que. P. R. 340.

Delay in prosecuting claims — Excuse — Merits —  
Leave to renew—Life insurance company: *In re Merchants' Life Assn. of Toronto*, Hoover's claim, 22 C. L. T. (Occ. N.) 21.

Lien on goods sold—Right of liquidator— Conditional Sales Act, Ont.: *In re Canadian Camera and Optical Co.*: A. R. Williams & Co.'s Claim, 2 Ont. L. R. 677.

Validity of claim on debentures—Stock purchased as collateral—Right of creditor to rank on assets: *Re Atlas Loan Co.*: *Elgin Loan Co.'s Claim*, 9 Ont. L. R. 250.

Section 74. (Settlement with claimant). Transactions between a liquidator with the authority of a Judge, and a claimant under sec. 61 of R. S. C., 1886, c. 129, bind the creditors of a company in liquidation and parties interested; they cannot be impeached except on the ground of nullity. Dominion Act, 62-63 Vict. ch. 43, permitting meetings and consultation of creditors, in certain cases, does not repeal the provisions of said sec. 61: *Ward v. Mullin*, Q. R. 14 K. B. 49.

#### SECURED CLAIMS.

Sections 76-79 (Secured creditor). A secured creditor can make a demand under sec. 4, and petition for the winding-up of the company without valuing in the petition his security under this section: *Re Cushing Sulphite Fibre Co.*, 37 N. B. R. 254. See *Re Brampton Gas Co.*, 4 Ont. L. R. 509.

And see the following cases regarding securities: *Re Lake Winnipeg Transportation Co.*, 8 Man. R. 463; *Re Essex Land, etc., Co.*, *Trout's Case*, 21 Ont. R. 367; *Re Thunder Hill Mining Co.*, 3 B. C. R. 351; *Re Nelson Saw Mill Co.*, 6 B. C. R. 156; *Re British Columbia Pottery Co.*, 4 B. C. R. 525; *Re Empire Brewing, etc., Co.*, 8 Man. R. 424; *Ontario Bank v. Chaplin*, 20 S. C. R. 152.

Lien of Bank on Company's Assets: See *Re P. R. Cumming Mfg. Co.*, *Bank of Ottawa's Claim*, 6 Ont. W. R. 578.

Mechanics lien—Priority: See *Re Ibex Mining, etc., Co. of Slocan*, 9 B. C. R. 557.

#### CONTESTATION OF CLAIMS.

Section 85. (Litispence). Contestation in winding-up—Litispence—Fraud and negligence of officers—Principal and agent—Liability: *Ward v. Montreal Cold Storage Co.*, Q. R. 26 S. C. 310. And see *Mullin's Case*, 4 Que. P. R. 340.

**Section 90.** (Security for costs). The security required by this section applies only to contestation of claims filed or admitted by the dividend sheet, and not to a contestation of the whole dividend sheet: *In re Union Brewery and Hyde*, 6 Que. P. R. 395.

#### DISTRIBUTION OF ASSETS.

**Section 93.** Distribution of surplus assets—Preference and ordinary shareholders: *Morrow v. Peterborough Water Co.*, 4 Ont. L. R. 324; *Ontario Bank v. Chaplin*, 20 S. C. R. 152.

#### FRAUDULENT PREFERENCES.

**Section 98.** (Sale or transfer in contemplation of insolvency). Bank—Winding-up — Contributories — Liquidators — Illegal trafficking in shares — Transfers within one month of suspension: *Re Central Bank: Henderson's Case*, 17 Ont. R. 110.

And see following cases decided under former Insolvent Acts: *Payne v. Hendry*, 20 Gr. 142; *Brooks v. Taylor*, 26 U. C. C. P. 443; *Skinner v. McLeod*, 15 N. B. R. 131; *Newton v. Ontario Bank*, 15 Gr. 283; *Masson v. McGowan*, 2 L. C. L. J. 37; *Mathers v. Lynch*, 27 U. C. Q. B. 244.

#### APPEALS.

**Section 101** (Original order). An appeal will lie under this section from the original winding-up order: *Re Union Fire Ins. Co.*, 13 Ont. A. R. 268.

**Sections 104 and 105.** (Practice). See *Re Central Bk. of Canada*, 17 Ont. P. R. 370, and 395; *Hogaboom's Case*, 24 Ont. A. R. 470; *Re Sarnia Oil Co.*, 15 Ont. P. R. 347; *Re D. A. Jones Co.*, 19 Ont. A. R. 63; *Ontario Bank v. Chaplin*, 20 S. C. R. 152; *Re Union Fire Ins. Co.*, 13 Ont. A. R. 268; *Re Rainy Lake Lumber Co.*, 12 Ont. P. R. 27; *Re Lake Superior Native Copper Co.*; in *re Plummer*, 9 Ont. R. 277; In *re Equitable Savings, etc., Assn.*, 4 Ont. L. R. 479, s. c. in 6 Ont. L. R. 26.

It will be noticed that sec. 104 assimilates the practice in winding-up appeals to appeals in ordinary cases in the appellate courts.

**Section 106.** (Supreme Court of Canada—Leave to appeal). A judgment refusing to set aside a winding-up order does not involve any amount, and leave to appeal therefrom

cannot be granted: *Cushing Sulphite Fibre Co. v. Cushing*, 37 S. C. R. 427. See *Stephens v. Gerth*, 24 S. C. R. 716, where it was held that where six persons were placed on the list of contributories, one for \$1,000 and the others for \$900 each, the amount involved in such appeal did not exceed \$2,000, but that the position was the same as if proceedings had been taken separately against each.

Leave to appeal per saltum under sec. 42 of the Supreme Court Act (R. S. C. 1906, c. 139), cannot be granted in a case under the Dominion Winding-up Act: *Re Cushing Sulphite Fibre Co.*, 36 S. C. R. 494. In the last mentioned case leave to appeal from a judgment of the Supreme Court of New Brunswick was refused where the judge had made no formal order on the petition for a winding-up order, and the proceedings before the full Court were in the nature of a reference rather than of an appeal from his decision. And see s. c. in 37 S. C. R. 173, where it was held that an appeal hereunder can only be granted when the judgment from which an appeal is sought is a final judgment, and the amount involved exceeds \$2,000. Held, also, that an order made under the Winding-up Act, for the postponement of foreclosure proceedings and directing that such proceedings be continued, is not a final judgment.

#### PROCEDURE—RULES OF.

Sections 107 to 135. British Columbia has made special rules applicable to winding-up proceedings.

(Service of petition—Ont. Practice). Service of a petition for a winding-up order on an assignee for creditors of a company is not service upon the company as required by sec. 13, sub-sec. 2, *supra*, such assignee not being an agent of the company within Ont. Con. Rule 159, at all events when the President and Directors are readily accessible, and have given no express authority to the assignee to accept such service: *Re Rodney Casket Co.*, 12 Ont. L. R. 409.

(Form of Order). An order directing the winding-up of a company instead of the business of the company is good: *Re Cushing Sulphite Fibre Co.*, 37 N. B. R. 254.

(Action against company—Leave of Court). An action against a company in course of winding-up, without the permission of a Judge, will be dismissed upon exception to the form: *Soucy v. Electric Printing Co.*, 5 Que. P. R. 105.



And so in the case of an action against a bank in liquidation: *Marcotte v. Turcot*, 4 Que. P. R. 342.

Contestation in winding-up—Litispence—Fraud and negligence of officers—Principal and agent—Liability: *Ward v. Montreal Cold Storage Co.*, Q. R. 26 S. C. 310.

Action for calls unpaid—Petition by liquidator to continue action—Opposition: *Victoria-Montreal Fire Ins. Co. v. Derome*, Q. R. 21 S. C. 319.

Jurisdiction of Divisional Courts: see *Re Sarnia Oil Co.*, 15 Ont. P. R. 182; *Re Rainy Lake Lumber Co.*, 12 Ont. P. R. 27.

Jurisdiction of Master: see *Re Sarnia Oil Co.*, 15 Ont. P. R. 182.

Action for calls—Subsequent winding-up—Counterclaim for rescission of contract for shares—Refusal of leave to shareholder to proceed with his action—Appeal: *Re Pakenham Pork Packing Co.*, 6 Ont. L. R. 582.

Section 124. (Notice of appointment of liquidator). This section does not extend to dispensing with notice of liquidator's appointment required under sec. 27, *supra*: See *Stimson v. North-west Cattle Co.*, Q. R. 14 K. B. 279.

See sec. 27 annotated, *supra*.

#### UNCLAIMED DEPOSITS.

Sections 136 and 137. (Bank—Fund in hands of Minister of Finance). Where moneys belonging to the suppliants had gone to form part of a fund paid into the hands of the Minister of Finance and Receiver-General, as unadministered assets in the case of the insolvency of a bank in proceedings under this Act, and it was objected that the suppliants were not entitled to such moneys because of judicial decision to the contrary in other litigation in respect of the fund: Held, that if it was clear that the matter had been really determined, effect should be given to the estoppel, but that where to give effect to it would work injustice the Court, before applying the rule, ought to be sure that an estoppel arises by reason of such decision. Held, also, that there was no estoppel in this case; also that on the facts suppliants were not entitled to indemnity: *Hogaboom v. The King*, 7 Ex. C. R. 292. Cf. *Hogaboom v. Receiver-General of Canada*: In re Central Bank, 28 S. C. R. 192; In re Central Bank of Canada, 30 Ont. R. 320.

See notes to sec. 32, *supra*. See also sections 115, 116, of the Bank Act, as well as the sections thereof (125-131) relating to Insolvent Banks.

## PART II.

## BANKS.

Section 149. See notes to secs. 8, 48 and 51, *supra*.

See also the following cases touching insolvent banks: *Kent v. Munroe*, 4 Ont. W. R. 468; *Ville Marie Bank v. Kent*, 4 Que. P. R. 429; *Kent v. Bastien*, Q. R. 12 K. B. 120; *Re Central Bank of Canada, Grand Trunk Ry. Co.'s claim*, 6 Ont. W. R. 372; *In re Central Bank, Lye's Claim*, 22 Ont. R. 247; *The Queen v. Bank of Nova Scotia*, 11 S. C. R. 1; *Maritime Bank v. The Queen*, 17 S. C. R. 657; *Exchange Bank v. The Queen*, 11 App. Cas. 157; *Kent v. Sisters of Charity* [1903] A. C. 220.

As to "contributories," see especially the following: *Re Central Bank, Henderson's Case*, 17 Ont. R. 110; *Re Central Bank, Baine's Case*, 16 Ont. A. R. 237; *Cloyes v. Darling*, 16 R. L. 649; *Ville Marie Bank v. Kent*, 4 Que. P. R. 429.

Section 150. See notes to sec. 11, *supra*.

Section 151. See notes to secs. 8 and 24, *supra*.

Sections 152, 153 and 154. See secs. 61-66 *infra*, and especially notes to sec. 63.

Section 156. See notes to secs. 14 and 24, *supra*.

Section 157. See notes to secs. 14, 24, 30 and 32, *supra*, and the following cases: *Re Central Bank*, 15 Ont. R. 309; *Re Bank of Liverpool*, 22 N. S. R. 97; *Forsyth v. Bank of Nova Scotia*, 18 S. C. R. 707; *Re Alpha Oil Co.*, 12 Ont. P. R. 298; *In re Commercial Bank of Manitoba*, 9 Man. R. 342.

Section 158. See the provisions of secs. 136, 137, *supra*, and notes. See also secs. 125-131 of the Bank Act as annotated, *ante*.

## PART III.

## LIFE INSURANCE COMPANIES.

As to the constitutionality of the provisions in this Part, see the remarks of Patterson, J., in *Shoolbred v. Clarke*, 17 S. C. R. at p. 273, *et seq.*

Reference in general is directed to the annotations in Part I.

Sections 162-163 (Deposit in hands of Minister). Canadian policy-holders petitioned for distribution of the deposit made by a foreign company with the Minister of Finance as required by the Insurance Act, the company being insolvent. Held, that they were entitled to the relief asked, notwithstanding that proceedings to wind up the company were pending before the English courts: *Re Briton Medical and General Life Association*, 12 Ont. R. 441. But see *Merchants Bank of Halifax v. Gillespie*, 10 S. C. R. 312; and *Allen v. Hanson*, *In re Scottish Canadian Asbestos Co.*, 18 S. C. R. 667; See also *Coleman v. Catholic Ord. Foresters*, 3 Que. P. R. 400; *In re Doran*, 3 Que. P. R. 441.

(Insolvent foreign company). Deposit—Surplus—Interest: *Re Covenant Mutual Life Assn. of Illinois*, 1 Ont. W. R. 392.

Claim of unmatured policy-holder: See *Re Merchants Life Assn., Vernon's Cases*, 1 Ont. L. R. 256.

#### PART IV.

##### OTHER THAN LIFE INSURANCE COMPANIES.

Reference in general is directed to the annotations in Parts I. and III.

# ANNOTATIONS.

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## CHAPTER 145.

### Canada Evidence Act.

#### WITNESSES.

Section 4 (Wife or husband). Wife or husband of person charged with indictable offence not only competent but may be compelled, to testify, and for the Crown as well as the prisoner: *Gosselin v. The King*, 33 S. C. 255.

Evidence by prisoner's wife of acts performed by her under direction of counsel sent by prisoner, not a communication disclosure of which cannot be compelled under par. 3. *Ib.*

Such communication may be *de verbo, de facto*, or *de corpore*. Sexual intercourse is a communication under said par.: *Ib.*, per Girouard, J.

In an action to revendicate money seized in a gaming house, on a search by warrant issued under s. 575 of the Criminal Code, 1892, the plaintiff who, by law of the province, could not testify for himself, was not allowed to do so by invoking the provisions of the Canada Evidence Act: *O'Neill v. Attorney-General of Quebec*, 26 S. C. 122.

The person "charged with an offence" is one actually on trial. When two are jointly indicted but tried separately, the one not on trial is a competent witness irrespective of this Act, and s.-s. 5 does not prevent the Judge from commenting on failure to call him: *Rex v. Blais*, 11 Ont. L. R. 345.

Direction to jury that accused has failed to account for a particular occurrence when onus is on him to do so, is not a comment on his failure to testify: *Rex v. Aho*, 11 B. C. 114.

But calling jury's attention to fact that prisoner was not called, warning them not to take it to his prejudice, and stating that if he was innocent he could have proved that he was not in the locality where and when the crime was committed, is prohibited comment: *The King v. McGuire*, 36 N. B. 609.

Section 5 (Incriminating questions). Applies to any evidence given under oath. Evidence cannot be subsequently used though witness does not claim privilege: *Reg. v. Hendershott*, 26 O. R. 678; *Reg. v. Hammond*, 29 O. R. 211. *Contra*, *Reg. v. Williams*, 28 O. R. 583; *Reg. v. Connolly*, 25 O. R. 151.

Covers evidence of party as well as independent witness: *Chambers v. Jaffray*, 12 Ont. L. R. 377; *Reg. v. Fox*, 18 Ont. P. R. 343.

And applies to examination on discovery in Ontario: 1b. And to examination of judgment debtor as to his means: *Rex. v. Van Meter*, 11 Can. C. C. 207.

On trial for perjury, evidence of incriminating answers to questions at preliminary hearing before coroner was improperly received, though privilege not claimed: *The Queen v. Thompson*, 2 N. W. T. 383. And on trial for murder, depositions of prisoner before coroner's court not admissible, though privilege was not claimed: *Reg. v. Hendershott*, *supra*.

Section 7 (Expert witness). Qu. If more than five are examined without objection, can evidence of extra witnesses be considered? *Dodge v. The King*, 38 S. C. 149; 10 Ex. C. 208, at p. 214.

#### DOCUMENTARY EVIDENCE.

Section 28 (Notice). Does not apply to certified extracts from registers of acts of civil status produced to explain alias: *The King v. Long*, Q. B. 11 K. B. 328.

# ANNOTATIONS.

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## CHAPTER 146.

### Criminal Code,

#### INTERPRETATIONS.

Section 2, sub-section 38 (Trade Combination). See *Reg. v. Gibson*, 16 O. R. 704.

#### GENERAL.

Section 13 (Civil remedy). Assault—Civil action after conviction: *Marchesault v. Gregoire*, 18 L. C. J. 140; 4 R. L. 541.

Quære: Is section intra vires as to criminal proceedings in Quebec? *Paquet v. Lavoire*, Q. R. 7 Q. B. 277, per *Blanchet, J.*

#### REMEDIES.

Section 15 (Under Act or common law). Common law offence—Misbehaviour in office — Audit — Pecuniary damage to public or corrupt motive not essential: *Reg. v. Arnoldi*, 23 O. R. 201.

#### JUSTIFICATION.

Section 18 (Children). Section refers to mental ability to distinguish right from wrong, not to physical ability to commit crime: *The Queen v. Hartlen*, 30 N. S. 317, per *Ritchie, J.*

#### JUSTIFICATION OR EXCUSE.

Section 26 (Erroneous sentence.) Warrant valid on face—Part of penalty not authorized—Assault on constable executing: *Reg. v. King*, 18 O. R. 566.

Section 30 (Arrest by peace officer.) Codification of common law—Does not authorize justice to direct constable to arrest without warrant: *McGuiness v. Dafoe*, 23 Ont. A. R. 704; affg. 27 O. R. 117.

Penitentiary—Conveying tobacco to convict contrary to rules—Arrest by constable by order of warden—Handcuffing: *Hamilton v. Massie*, 18 O. R. 585.

Verbal statement to officer that a person had committed theft the day before does not justify him in arresting such person without warrant: *Mousseau v. City of Montreal*, Q. R. 12 S. C. 61.

Section 31 (Assisting peace officer.) Codification of common law: *McGuinness v. Dafoe*, 23 Ont. A. R. 704.

#### JUSTIFICATION.

Section 55 (Self defence,) Homicide under reasonable apprehension of grievous bodily harm to wife and children: *The Queen v. Theriault*, 32 N. B. 504.

#### CRIMINAL CODE.

#### PARTIES TO OFFENCES.

Section 69 (Accessory.) Principal and accessory—Fraudulent appropriation by principal and fraudulent receiving by accessory at same time: *McIntosh v. The Queen*, 23 S. C. 180.

Betting—Stakeholder—Bettors accessories: *Walsh v. Trebilcock*, 23 S. C. 695.

Abetting—Planning crime for others to commit: *Reg. v. Esmonde*, 26 U. C. Q. B. 152.

Abetting murder — Insufficient evidence: *Reg. v. Curtley*, 27 U. C. Q. B. 613.

Forgery—Accessory after the fact—Complicity with other forgeries and association with principal: *Reg. v. Bent*, 10 O. R. 557.

Assisting to conceal stolen property — Liability as principal: *The Queen v. Campbell*, Q. R. 8 Q. B. 322.

Common criminal intent and actual participation must be shown to convict abettor as principal: *The Queen v. Graham*, Q. R. 8 Q. B. 169.

The lessor of a house who knows of the intention of lessee to use it as a common bawdy house, aids the latter to commit an indictable offence and may be convicted as a principal under sub-sec. 2: *The Queen v. Roy*, Q. R. 9 Q. B. 312.

Three men on trial for burglary were being conveyed to the court house in a cab when a person unknown threw a parcel through the window containing revolvers, which were seized by the men and a struggle ensued resulting in the death of a constable. One of

the men, being indicted for murder, was convicted, the court holding that the shooting of the constable was committed in the prosecution of the unlawful purpose of escaping from custody, and each was liable for the acts of the others: *Rex v. Rice*, 4 Ont. L. R. 223.

**Section 71** (Accessory after fact.) Married woman—Murder of husband—Evidence—Corroboration: *Reg. v. Smith*, 38 U. C. Q. B. 218; *United States Express Co. v. Donohoe*, 14 O. R. 333.

Corroboration — Cautioning jury — Case reserved: *Reg. v. Andrews*, 12 O. R. 184; *Reg. v. Smith*, *supra*.

**Section 72** (Attempt.) Planning robbery for others to commit: *Reg. v. Esmonde*, 26 U. C. Q. B. 152.

Burglary—Abortive effort—Prevention—Evidence: *Reg. v. McCann*, 28 U. C. Q. B. 514.

#### PUBLIC ORDER.

**Section 77** (Foreign aggression). Evidence of intent to levy war: *Reg. v. Slavin*, 17 U. C. C. P. 205.

Prisoner indicted as citizen of United States was acquitted on proving himself a British subject. Being then indicted as British subject he was not allowed to plead *autrefois acquit*: *Reg. v. Magrath*, 26 U. C. Q. B. 385.

One joined with armed body which entered Canada from United States and attacked Canadian volunteers is guilty of their acts of hostility and their intent even if he carried no arms: *Reg. v. Slavin*, *Reg. v. McMahon*, 26 U. C. Q. B. 195.

And this though he was there as a clergyman: *Ib.* Or as a reporter only: *Reg. v. Lynch*, 26 U. C. Q. B. 208.

Though aggressor was a British subject by birth he might become liable as citizen of United States by being naturalized: *Reg. v. McMahon*. Or Crown may waive allegiance and try him as an American citizen: *Reg. v. Lynch*.

Foreign citizenship established by prisoner's admissions and declarations: *Reg. v. Slavin*, 17 U. C. C. P. 205; *Reg. v. McMahon*; *Reg. v. Lynch*.

#### PUBLIC ORDER.

**Section 105** (Prize fight). Performance advertised as a boxing exhibition, but accompanied by all the elements constituting a prize-fight, is an offence under this section: *Steele v. Maber*, Q. R. 19 S. C. 392.



## AGAINST ADMINISTRATION.

Section 158 (Fraud on government). Conspiracy to procure contract — Present to employee — Evidence: *Reg. v. Connolly*, 25 O. R. 151.

## OFFENCES AGAINST ADMINISTRATION.

Section 162 (Selling office). Common law misdemeanour — New law by Criminal Code, 1902 — Offence under Imperial Acts—Office of sheriff: *Reg. v. Moodie*, 20 U. C. Q. B. 389.

## MISLEADING JUSTICE.

Section 170 (Perjury). Oath administered to prisoner in open court by clerk of county court sitting in general sessions of the peace for, and at verbal request of, clerk of the peace — Witness properly sworn: *Reg. v. Coleman*, 30 O. R. 93.

Perjury may be committed on examination for discovery: *Rex. v. T—*, 12 B. C. 223.

Attempting to procure woman falsely to make affidavit required by statute is indictable: *Reg. v. Clement*, 26 U. C. Q. B. 297.

Attempt by letter—Place where offence was complete—Place of trial: *Ib.*

Joint affidavit—"Each for himself maketh oath," etc.—Each may be indicted: *Reg. v. Atkinson*, 17 U. C. C. P. 295.

Perjury is committed by taking of oath and defect in jurat of affidavit is not material: *Ib.*

False statement by person sworn before county judge taking evidence in United States in an inquiry under an Ontario statute not perjury, the oath administered by judge having no legal significance: *In re Godson and City of Toronto*, 16 O. R. 275.

A magistrate having jurisdiction over a whole district heard a charge in a part thereof in which he did not reside, while by statute such charge could only be tried by a resident justice. Held, that the hearing was a judicial proceeding and perjury could be assigned for false swearing thereat: *Drew v. The King*, 33 S. C. 228, aff'g Q. R. 11 K. B. 477. Under this decision the validity of the preceding case, *Re Godson and Toronto*, is doubtful.

Assignment of perjury in giving evidence in civil action sur faits et articles — Negative averments — Admissibility of evidence—General verdict: *Downie v. The Queen*, 15 S. C. 358; 11 L. N. 315.

There can be no accomplices in perjury: *Reg. v. Pelletier*, 1 R. L. 565.

Perjury cannot be assigned for false statement in a deposition which is illegal for not conforming to requirements of local statutes: *Reg. v. Gibson*, 7 R. L. 573; *Reg. v. Martin*, 21 L. C. J. 156; *Reg. v. Denault*, 8 L. N. 250.

Not even where the observance of the requirement was subsequently waived: *Reg. v. Martin*, 7 R. L. 672.

But see *Drew v. The King*, *supra*.

#### AGAINST ADMINISTRATION.

Section 193 (Escape by negligence). Verbal remand to enable prisoner to procure bail—Escape by negligence of constable—Custody of prisoner: *Reg. v. Shuttleworth*, 22 U. C. Q. B. 372.

#### OFFENCES AGAINST RELIGION.

Section 201 (Religious worship). Person entering religious meeting, announcing himself a Catholic and French Canadian, and calling upon all of that faith and nationality to leave, is guilty of offence under this section: *Moore v. Gauthier*, Q. R. 14 K. B. 530.

Service must be conducted by person lawfully in charge: *Rex v. Wasyl Kapij*, 15 Man. 110.

#### OFFENCES AGAINST MORALITY.

Section 207 (Advertising). Selling medicine labelled with printed caution against use during pregnancy not in itself an offence: *The King v. Karn*, 5 Can. C. C. 543.

On appeal the Court refused to order a new trial, but held that it would have been right to leave the case to the jury: 5 Ont. L. R. 704.

Section 214 (Seduction). Girl under sixteen—Evidence of rape—Indictment for rape previously refused by grand jury—Conviction for seduction: *Reg. v. Doty*, 25 O. R. 362.

#### NUISANCES.

Section 225 (Bawdy-house). Must be proved that persons resort to house for purposes of prostitution: *Rex v. Osberg*, 15 Man. 147. And see notes to sec. 773.

Section 226 (Common gaming house). Playing "policy"—Betting and payment in United States—No offence: *Reg. v. Wettman*, 25 O. R. 459.

“Gain” may be derived indirectly — Keeper of cigar shop with room in rear for playing poker convicted, though he profited nothing from the game itself, but did from sale of cigars to the players: *Rex v. James*, 6 Ont. L. R. 35; see *Reg. v. Sanders*, *infra*.

Game of “darts:” *Rex v. Cashen*, 11 Can. C. C. 183. Cane and ring game: *Rex v. Russell*, 11 Can. C. C. 180.

**Section 227 (Common betting house).** Betting on foreign race—Tent with wire to race track—Keepers convicted: *Reg. v. Giles*, 26 O. R. 586; *Rex v. Hanrahan*, 3 Ont. L. R. 659. Keeper not a party to offence: *Rex v. Hendrie*, 11 Ont. L. R. 202.

Telegraph office — Connection with bank—System of betting on foreign race—Keeper convicted: *Reg. v. Osborne*, 27 O. R. 185.

Sub-section 2 of section 235 not to be read into this section: *Rex v. Hanrahan*.

Wooden box or booth moved on castors about grounds of racing association, and used by bookkeepers to make and record bets is an “office” or “place” under this section: *Rex v. Saunders*, 12 Ont. L. R. 615.

**Section 228 (Keeper of disorderly house).** Crown must prove that accused derives gain or profit from house: *Reg. v. Sanders*, 20 C. L. T. Occ. N. 213. See *Rex v. James*, *supra*.

**Section 229 (Playing or looking on).** Conviction providing for distress on non-payment of fine quashed, punishment being excessive: *Reg. v. Logan*, 16 O. R. 335.

Being in office where contracts prohibited by s. 231 are made, not an offence under this section: *Reg. v. Murphy*, 17 O. R. 201.

**Section 232 (Gaming in stocks).** Being in office where contracts prohibited by s. 231 were made, not the offence of playing or looking on in gaming house under s. 229: *Reg. v. Murphy*, 17 O. R. 201.

**Section 235 (Betting, etc.).** Bets between individuals on election—Stakeholder an offender—Bettors accessories: *Walsh v. Trebilcock*, 23 S. C. 695, rev’g 21 Ont. A. R. 55.

Does not apply to election, etc., out of Canada: *Reg. v. Smiley*, 22 O. R. 686.

Under s.-s. 2 agreement for sale of betting privileges at race meeting by unincorporated association, lessees of incorporated owners of course, not illegal: *Stratford Turf Assoc. v. Fitch*, 28 O. R. 579.

Section does not forbid betting: *Reg. v. Dillon*, 10 Ont. P. R. 352. But bettors may be accessories to offence: *Walsh v. Trebilcock*, *supra*.

Section 236 (Lottery). Guessing number of beans or buttons in a jar not a "mode of chance" for disposing of property: *Reg. v. Dodds*, 4 O. R. 390; *Reg. v. Jamieson*, 7 O. R. 149.

Property in (a) not necessarily "specific property": *Reg. v. Lorrain*, 28 O. R. 123.

Art association. Disposal of pictures. Option to give money: *Ib*.

Provincial legislature cannot authorize lotteries forbidden by code: *L'Assoc. St. Jean Baptiste v. Brault*, 30 S. C. 598.

A municipal by-law forbidding gambling, etc., in licensed taverns is valid as being authorized by the Mun. Act of the Province and general police power of the council: *In re Brodie and Town of Bowmanville*, 38 U. C. Q. B. 580.

A customer purchased a can of tea from a dealer who represented that among the cans were some containing respectively a gold watch, a diamond ring and \$20 in money, and not finding any of such articles purchased others without success. The dealer was properly convicted of disposing of property by a mode of chance under s.-s. (b): *Reg. v. Freeman*, 18 O. R. 524.

Section 237 (Burial). One who, under no legal obligation to do so, undertakes to bury a dead body and removes it for the purpose, is indictable if he fails to carry out his undertaking: *The Queen v. Newcomb*, 2 Can. C. C. 255.

#### VAGRANCY.

Section 238 (Vagrants). Conviction under s.-s. (i) must show that accused, before or at the time of arrest, was asked to give an account of herself and did not: *Reg. v. Levecque*, 30 U. C. Q. B. 509.

Conviction for keeping house of ill-fame must mention the place where offence was committed: *Reg. v. Cyr*, 12 Ont. P. R. 24.

For description of offence under s.-s. (1): see *Ex parte Gagnon*, Q. R. 2 Q. B. 287.

Being drunk not an offence under s.-s. (f). It is causing a disturbance by being drunk: *Ex parte Despatie*, 9 L. N. 387.

City carter who, contrary to city ordinances, loiters near hotel entrance and solicits passengers, but does not

obstruct them, is not an offender under s.-s. (c): *Smith v. Reg.* M. L. R. 4 Q. B. 325.

A woman kept by a married man who surrenders herself to sexual intercourse with him alone, is not within the purview of s.-s. (l): *The Queen v. Rehe*, Q. R. 6 Q. B. 274.

A man living with, and supported by, his parents is not an offender under par. (a) because he lives without employment: *The Queen v. Riley*, Q. R. 7 Q. B. 198.

#### OFFENCES AGAINST THE PERSON.

**Section 242 (Necessaries).** Neglect to provide for wife—Indictment—Not necessary to aver that neglect endangered life or permanently injured health of wife: *Reg. v. Smith*, 2 L. N. 223; *Reg. v. Scott*, 7 L. N. 322; 28 L. C. J. 264.

Non-support of wife—Proof necessary that she was in need and husband able to supply her wants: *Reg. v. Nasmith*, 42 U. C. Q. B. 242.

Former marriage of wife — Evidence of first husband's death: *Reg. v. Holmes*, 29 O. R. 362.

Lawful excuse — Agreement to live apart and be supported as before marriage: *Reg. v. Robinson*, 28 O. R. 407.

Refusal of magistrate to allow husband to testify on his own behalf: *Reg. v. Meyer*, 11 Ont. P. R. 477.

On evidence that wife was pregnant and so incapacitated from work, judge may find that she was "likely to be permanently injured." *The Queen v. Bowman*, 31 N. S. 403. Whether or not health of wife is likely to be permanently injured is a question for trial Judge only: *The Queen v. McIntyre*, 31 N. S. 422.

Neglect to provide medical attendance and remedies is within the section. Conscientious belief that same is wrong no excuse: *Rex v. Brooks*, 9 B. C. 13; *Christian Science*, *Rex v. Lewis*, 6 Ont. L. R. 132.

**Section 243 (Master).** Neglect of servant, a boy of fifteen—Exposure to cold—Gross negligence—Manslaughter: *The Queen v. Brown*, 1 Terr. L. R. 475.

**Section 246 (Medical aid).** Abortion—Precautions against infection—Evidence: *Reg. v. Sparham*, 25 U. C. C. P. 143.

**Section 247 (Charge of dangerous things).** Corporation may be indicted for manslaughter and fined: *Union Coll. Co. v. The Queen*, 31 S. C. 81, affg. 7 B. C. 247; *Reg. v. Great West Laundry Co.*, 13 Man. 66, overruled.

Section 250 (Homicide). Assault—Subsequent disease — Admission and weight of evidence: *Theal v. The Queen*, 7 S. C. 397, aff'g 21 N. B. 449.

Malice—Continuance of quarrel: *Reg. v. McDowell*, 25 U. C. Q. B. 108.

Motive—Insurance—Evidence of previous attempt by prisoner to insure another person not admissible: *Reg. v. Hendershott*, 26 O. R. 678. But on charge of wife murder evidence of various applications for insurance on her life was admitted: *Reg. v. Hammond*, 29 O. R. 211. And also where wife indicted for murder of husband by poison, evidence of attempt to poison her former husband: *Reg. v. Sternaman*, 29 O. R. 33.

Cause of death—Assault—Expert evidence: *Reg. v. Jones*, 28 U. C. Q. B. 416.

Medical statement—Precautions—Evidence: *Reg. v. Sparham*, 25 U. C. C. P. 143.

Pagan Indian—Delusion: *Reg. v. Machekequonabe*, 28 O. R. 309.

Shooting with intent—Possession of burglar's tools —Evidence: *The King v. Mooney*, Q. R. 15 K. B. 57.

Section 252 (Culpable homicide). Under reasonable apprehension of injury to wife and family: *The Queen v. Theriault*, 32 N. B. 504.

Section 255 (Influence on mind). Threats of personal violence— Assault without battery: Death from syncope: *Reg. v. Dugal*, 4 O. L. R. 350.

Section 257 (Causing death). Punishment of intoxicated soldier —Mode—Tying up so as to cause death: *The Queen v. Stowe*, 2 N. S. D. 121.

Section 261 (Provocation). Heat of passion — Continuance of quarrel—Malice: *Reg. v. McDowell*, 25 U. C. Q. B. 108.

Legal right—Ejectment from house—Request to leave—Evidence: *Reg. v. Brennan*, 27 O. R. 659.

Section 262 (Manslaughter). Assault—Subsequent disease—Evidence—*Theal v. The Queen*, 7 S. C. 397.

Inciting to drink—Intent—Murder or manslaughter: *Reg. v. Lortie*, 9 Q. L. R. 352.

Corporation—Charge of dangerous things: *Union Coll. Co. v. The Queen*, 31 S. C. 81.

Delusion—Pagan Indian: *Reg. v. Machekequonabe*, 28 O. R. 309.

Railway director cannot be indicted for manslaughter for omitting to do something not required by charter, though he had promised to do it: *Ex parte Brydges*, 18 L. C. J. 141.

Section 272 (Concealing dead body of child). Temporary concealment—Evidence for jury—Speedy trial: *Reg. v. Piché*, 30 U. C. C. P. 409.

Section 273 (Wounding.) On indictment for wounding with intent, a verdict of “guilty without malicious intent” is an acquittal: *Slaughenwhite v. The King*, 35 S. C. 607.

#### ASSAULT.

Section 290 (Defined). Cannot convict of, on indictment for murder or manslaughter: *Reg. v. Ganes*, 22 U. C. C. P. 185; *Reg. v. Dingman*, 22 U. C. Q. B. 283; *Reg. v. Smith*, 34 U. C. Q. B. 552.

Firing pistol: *Reg. v. Cronan*, 24 U. C. C. P. 106.

Abusive language and gestures: *Reg. v. Harmer*, 17 U. C. Q. B. 555.

Assault may be committed though party assaulted consented to fight: *The Queen v. Buchanan*, 12 Man. 190.

Section 291 (Common). Civil action lies after conviction: *Marchesault v. Gregoire*, 18 L. C. J. 140; 4 R. L. 541.

By policemen — Liability of corporation: *City of Montreal v. Doolan*, 13 L. C. J. 71; 18 L. C. J. 124.

Section 292 (Indecent). School teacher—Subsequent conduct—Evidence: *Reg. v. Chute*, 46 U. C. Q. B. 555.

Section 293 (On males). Cannot be committed by boy under fourteen: *The Queen v. Harlten*, 30 N. S. 317. Per *Ritchie, J.*: If act was against will of other party he could be convicted of assault. *Ib.*

Section 296 (Aggravated). Assault with intent to commit indictable offence is an attempt to commit: *John v. The Queen*, 15 S. C. 384.

Indictment for rape — Conviction for assault with intent: *Ib.*

With intent to commit murder — Opening railway switch: *In re Lewis*, 6 Ont. P. R. 236.

On peace officer — Constable attempting to serve summons under C. T. Act—Evidence—Wife of prisoner not competent witness: *MacFarlane v. The Queen*, 16 S. C. 393.

Occasioning bodily harm — Prior conviction—Evidence as to character: *Reg. v. Treganzie*, 15 O. R. 294.

Warrant of commitment valid on face — Part of penalty not authorized—Assault on constable executing: *Reg. v. King*, 18 O. R. 566.

Section 297 (Kidnapping). Speedy trial—Procedure and jurisdiction: *Cornwall v. Reg.* 33 U. C. Q. B. 106.

#### UNLAWFUL CARNAL KNOWLEDGE.

Section 298 (Rape). Connection with woman under circumstances which induce her to believe it is her husband, not rape: *Reg. v. Francis*, 13 U. C. Q. B. 116.

Idiot or lunatic—Capacity to consent—Evidence—Misdirection: *Reg. v. Connolly*, 26 U. C. Q. B. 317.

On daughter — Fear or solicitation — Finding of fact: *Reg. v. Cardo*, 17 O. R. 11.

Evidence of commission of offence—Statement of counsel at previous trial: *Reg. v. Bedere*, 21 O. R. 189.

Consent of girl under fourteen immaterial: *Reg. v. Paquet*, 9 Q. L. R. 351.

Statement of prosecutrix to police inspector on day following assault not admissible: *Reg. v. Graham*, 31 O. R. 77.

Evidence of prosecutrix—Previous unchastity—Admissibility of question—Refusal to answer: *Laliberté v. The Queen*, 1 S. C. 117.

Qu. Can rape be committed on girl under fourteen? *Ex parte Wright*, 34 N. B. 127. It can: *The Queen v. Riopel*, Q. R. 8 Q. B. 181.

Section 300 (Attempt to rape). Assault with intent to commit, is an attempt: *John v. The Queen*, 15 S. C. 384.

#### ABORTION.

Section 303 (Procuring). Using instrument—Evidence: *Reg. v. Anderson*, 12 O. R. 184.

Section 305 (Drugs). Oil of savin — Noxious thing: *Reg. v. Stitt*, 30 C. P. 30.

#### OFFENCES AGAINST CONJUGAL RIGHTS.

Section 307 (Bigamy). Marriage out of Canada — Evidence — Officiating minister: *Reg. v. Brierly*, 14 O. R. 525; *The Queen v. Allan*, 2 Old. (N.S.), 373.



Proof of first marriage—Recitals in deed not sufficient: *Reg. v. Duff*, 29 U. C. C. P. 255. Nor confession of prisoner: *Reg. v. Ray*, 20 O. R. 212. Contra: *The Queen v. Allan*, *supra*. Evidence of first wife not admissible: *Reg. v. Madden*, 14 Q. B. 588; *Reg. v. Tubbee*, 1 Ont. P. R. 98; *Reg. v. Fontaine*, 15 L. C. J. 141.

Nor of second wife until first marriage is proved: *Reg. v. Tubbee*, *supra*.

Foreign divorce—Domicile not changed—Marriage not dissolved: *Rex v. Woods*, 6 Ont. L. R. 41.

Sub-section 3 (Absence). Crown must prove that prisoner knew consort was alive within seven years: *Reg. v. Fontaine*, 15 L. C. J. 141; *The Queen v. Debay*, 3 N. S. D. 540.

But when two marriages are proved, prisoner must show absence. If he does not, Crown need not establish knowledge: *Reg. v. Dwyer*, 27 L. C. J. 201; 6 L. N. 66.

If prisoner relies on first wife's absence, he must prove he made inquiries and had reason to believe her dead, especially if he had deserted her, and this though she may have married again: *Rev. v. Smith*, 14 U. C. Q. B. 565.

Sub-section 4 (Out of Canada). Provisions *intra vires*: In re Bigamy Sections 27 S. C. 461; *Reg. v. Brierly*, *supra*: *Reg. v. Plowden*, 25 O. R. 656, overruled. And see *Macleod v. Attorney-General of New South Wales*, [1891] A. C. 455.

Necessary proof—Jury must find that prisoner was British subject and left Canada with intent: *Reg. v. Pierce*, 13 O. R. 226.

And indictment must so allege: *Reg. v. McQuigan*, 2 L. C. R. 340.

Section 310 (Polygamy). For evidence under s.-s. (b), (c), and (d): see s. 948.

Co-habitation of two persons, each of whom is married to another, not indictable under this section: *Reg. v. Labrie*, M. L. R. 7 Q. B. 211.

#### PERSON AND REPUTATION.

Section 314 (Abduction). Of heiress—Prosecution need not prove prisoner's knowledge that the woman abducted was an heiress or had an interest in property: *Reg. v. Kaylor*, 1 Dor. 364.

Section 315 (Girl under 16.) Prisoner in Victoria, B.C., wrote to girl in United States urging her to come and join him.

She consenting, he sent her money and met her on arrival at Victoria, took her to a boarding house and they passed the night together.

Per McCreight, Walkem and Drake, JJ.: When she met prisoner at Victoria she had abandoned possession and control of her father and prisoner was not guilty of offence in this section.

Per McCreight and Walkem, JJ.: That the reception of prisoner's letter was the cause of the girl abandoning her father's possession, and the offence therefore was partly committed out of the jurisdiction.

Per Davie, C.J., and Crease, J.: The offence was wholly committed within Canada: *Reg. v. Blythe*, 4 B. C. 276.

Section 316 (Abducting child). On decree for absolute divorce custody of five-year-old child was given to the mother with permission to father to take it out in day time, returning it the same day. Father having taken it out and carried it to Canada committed an offence under this section for which he was extradited: *Rex v. Watts*, 3 Ont. L. R. 368.

#### DEFAMATORY LIBEL.

Section 317 (Defamatory libel). Indictment for offence not stating that accused intended to injure reputation of person libelled by exposing him to hatred, contempt or ridicule, or to insult him, is bad, cannot be amended and must be set aside: *The Queen v. Cameron*, Q. R. 7 Q. B. 162.

Section 329 (Newspaper). Must prove defendant was proprietor when libel was published. That he was such at time of trial insufficient: *Reg. v. Sellars*, 6 L. N. 197.

Defence that defamatory matter was inserted without proprietor's cognizance. Crown may prove prior publication of similar libels by same editor and accused may be liable for retaining latter: *The King v. Molleur*, Q. R. 14 K. B. 556.

Section 331 (Truth a defence). Facts relied on to show alleged libel was true and published for public benefit should be set out in plea: *Reg. v. Creighton*, 19 O. R. 339.

Plea quashed on summary motion instead of demurrer. *Ib.*

Plea should set out the facts showing that publication was for public benefit, but not evidence: *The Queen v. Grenier*, Q. R. 6 Q. B. 31.

## THEFT.

Section 347 (Definition). Lapse of time—Circumstantial evidence—Possession of stolen goods—Offer to settle: *Reg. v. Starr*, 40 U. C. Q. B. 268.

Hire of horse without criminal intent—Subsequent conversion: *Reg. v. Tweedy*, 23 U. C. Q. B. 120.

Unstamped promissory note not note or valuable security under the Criminal Acts: *Scott v. The Queen*, 2 S. C. 349. *Contra*, *Reg. v. Dewitt*, 21 N. B. 17.

Partners—Dissolution—Division of assets—Insurance monies—Physical possession: *Mooney v. Reg.*, 3 Steph. Dig. (Que). 224.

Indictment for theft will not lie against partner on account of partnership money: *Reg. v. Lowenbruck*, 18 L. C. J. 212.

A market clerk who collects money from persons exchanging stalls on the false representation that it was due the city, is not guilty of theft: *The Queen v. Tessier*, Q. R. 10 K. B. 45.

“Unlawfully did steal” in an information sufficiently describes the offence of taking “fraudulently and without colour of right.” *The King v. George*, 35 N. S. 42.

Conversion of goods found not of itself theft: *The Queen v. Slavin*, 35 N. B. 388.

Section 349 (Things seized). A guest at an hotel whose effects have been seized for non-payment, is guilty of theft if he takes any of them away without the landlord's authority: *The Queen v. Hollingsworth*, 2 Can. C. C. 291.

Section 355 (Person required to account). Officers of Trinity House—Special fund—Property of Her Majesty: *Reg. v. David*, 17 L. C. J. 310.

Negotiable securities—Possession for purpose of retiring notes—Conversion of securities or proceeds: *Reg. v. Barnett*, 17 O. R. 649.

“Terms” not “terms imposed by person paying money,” but “terms on which accused when he receives it, holds it.” *Reg. v. Ungar*, 14 C. L. T. Occ. N. 294.

Broker—Failure to sell stocks as instructed—Loss to customer: *The King v. Bastien*, Q. R. 15 K. B. 16.

Section 356 (Under power of attorney). Must be written power of attorney: *Reg. v. Chouinard*, 4 Q. L. R. 220.

Section 359 (Clerk). Officer of Trinity House—Special fund—Property of Her Majesty: *Reg. v. David*, 17 L. C. J. 310.

General deficiency—Unlawful appropriation—Clerk guilty though no precise sum paid by any particular person is taken: *Reg. v. Glass*, 1 L. N. 41.

Treasurer of municipality may be indicted for illegal appropriation of funds, though sanctioned by resolution of council: *Mun. of East Nissouri v. Horseman*, 16 Q. B. 576.

A market clerk who collects money from persons exchanging stalls, falsely representing it to be due the city, does not steal the property of his employer (s.-s. a), nor anything in his possession by virtue of his employment (c): *The Queen v. Tessier*, Q. R. 10 K. B. 45.

Section 364 (Post letters). A letter delivered to a letter carrier, even in the post office, is a "post letter:" *The King v. Trepanier*, Q. R. 10 K. B. 222.

Section 374 (Stealing trees). Cordwood not "the whole or any part of a tree" under this section: *Reg. v. Caswell*, 33 U. C. Q. B. 303.

Section 379 (From the person.) Offence of stealing \$3.48 from the person is indictable, though it may come under the provisions for speedy trials and full penalty under this section may be imposed: *Reg. v. Conlin*, 29 O. R. 28.

Section 397 (Fraudulent purpose). Fraud on post office—Money orders—Form of indictment—Not necessary to allege intent to defraud any particular person: *Reg. v. Des-sauer*, 21 U. C. Q. B. 231.

Section 398 (Bringing stolen property into Canada). Express agent—Stealing in United States—Absconding to Canada: *Reg. v. Hennessy*, 35 Q. B. 603.

#### RECEIVING STOLEN GOODS.

Section 399 (Obtained by indictable offence). Possession without evidence of theft by another person will not support indictment for receiving goods knowing them to be stolen: *Reg. v. Perry*, 26 L. C. J. 24.

But if prisoner knew property had been stolen, the fact that he derived no benefit is not an excuse: *Reg. v. Fournier*, 10 Q. L. R. 35.

Bailee or trustee — Executor intending to steal money of estate gave it to prisoner, who absconded. Prisoner convicted of receiving: *McIntosh v. The Queen*, 23 S. C. 180.

Accessory to theft may be convicted of receiving: *The Queen v. Hodge*, 12 Man. 319.

## FALSE PRETENCES.

Section 405. Discharged employee—Obtaining goods in employer's name: *Reg. v. Robinson*, 9 L. C. R. 278.

Shareholder cannot obtain money of company by: *Reg. v. St. Louis*, 10 L. C. R. 34.

Payment under existing obligation induced by false pretence, no offence: *Reg. v. Lavallee*, 16 R. L. 299.

Order for goods—Promise to pay cash: *Reg. v. McDonald*, 2 L. C. L. J. 34.

Obtaining cheque on bank: *Reg. v. Maynard*, 2 L. N. 357.

Obtaining cheque from accountant of court—Fraud: *Reg. v. Parkinson*, 41 U. C. Q. B. 545.

Non-transferable railway passes: *Reg. v. Abraham*, 24 L. C. J. 325.

Municipal relief—Procuring order by false pretence—Indictment: *Reg. v. Campbell*, 18 U. C. Q. B. 413.

Post office orders—Intent to defraud: *Reg. v. Dessauer*, 21 U. C. Q. B. 231.

Taking bill to change—Evidence: *Reg. v. Gemmell*, 26 U. C. Q. B. 312.

Payment by note of third party—Assumption of assurance of validity: *Reg. v. Davis*, 18 U. C. Q. B. 180.

Procurement of goods by—False pretence not inducement—Transfer of property as security—Value misrepresented: *Reg. v. Durocher*, 12 R. L. 697.

Obtaining money by false statement as to ownership of property: *Reg. v. Judah*, 7 L. N. 385, 8 L. N. 124.

Indictment for obtaining \$1,200 from A. by false pretences not supported by proof of obtaining A.'s note for such sum which A. paid before maturity: *Reg. v. Brady*, 26 U. C. Q. B. 13.

Payee of note receiving payment on threatening to sue after sale of note to third party: *Reg. v. Lee*, 23 U. C. Q. B. 340.

Obtaining loan on representation that vacant lot offered as security had brick house on it: *Reg. v. Huppel*, 21 U. C. Q. B. 281.

Where a person acting in collusion with police authorities met by appointment the prisoner, who had offered to sell him counterfeit notes, and on receiving a parcel said to contain such notes gave prisoner his watch and \$50, immediately after which prisoner was arrested, the latter was convicted of obtaining the watch and money by false pretences: *Reg. v. Corry*, 22 N. B. 543.

Obtaining credit at bank by false statement of financial position not indictable under this section: *The Queen v. Boyd*, Q. R. 5 Q. B. 1.

Person present when false representation is made by another acting with him, who knows it to be false and gets part of the money obtained, is indictable under this section: *Reg. v. Cadden*, 4 Terr. L. R. 304.

Section 406 (Procuring security). Promissory note—Promise to pay debt out of proceeds: *Reg. v. Pickup*, 10 L. C. J. 310.

Signing contract to pay for goods—Subsequent execution of note—Indictment: *Reg. v. Rymal*, 17 O. R. 227.

Order for goods—Procuring note by false representations—Evidence of similar frauds: *Reg. v. Hope*, 17 O. R. 463.

Security must be valuable to person parting with it—Procuring execution of mortgage not obtaining valuable security: *Reg. v. Brady*, 26 U. C. Q. B. 13.

Indictment lies for inducing person to write his name on papers which may afterwards be dealt with as valuable securities: *Reg. v. Burke*, 24 O. R. 64.

#### FRAUD.

Section 417 (Assignment). Indictment lies for assignment with intent to defraud a creditor whose debt is not due: *Reg. v. Henry*, 21 O. R. 113.

Assignment of all debtor's property, with preferences to certain creditors, not an offence under this section: *The Queen v. Shaw*, 31 N. S. 534.

#### RIGHTS OF PROPERTY.

Section 444 (Conspiracy to defraud). Conspiracy to permit persons to travel free on railway an offence: *Reg. v. Defries*, 25 O. R. 645.

Indictment lies for abortive conspiracy: *Reg. v. Frawley*, 25 O. R. 431.

One conspirator may be indicted alone and convicted though the other is within the jurisdiction at the time: *Ib.*

As to what constitutes conspiracy: See *Reg. v. Downie*, 13 R. L. 429.

Section 451 (Menacing letter). Delivering letter demanding with menaces—Trial—Misdirection: *The Queen v. Collins*, 33 N. B. 429.

Sending threatening letter—Admission of evidence—Comparison of handwriting: *The Queen v. Dixon*, 29 N. S. 462.

Section 452 (Demanding with menaces). Collection of debt—Intent—Threat of imprisonment—Procuring goods—Debtor and creditor: *Reg. v. Lyon*, 29 O. R. 497; *Talon v. Piché*, 9 L. N. 380.

Words “without reasonable or probable cause” apply only to demand: *Reg. v. Mason*, 24 C. P. 58.

What necessary to constitute offence: *Reg. v. Tranchant*, 9 L. N. 333; *Talon v. Piché*, 9 L. N. 380.

Menace need not be of character to excite alarm to be within this section: *The Queen v. Gibbons*, 12 Man. 154.

#### ROBBERY AND EXTORTION.

Section 453 (Accusation of crime). Intent to extort by—Accusation may be by laying criminal information: *Reg. v. Kempel*, 31 O. R. 631.

Threat to accuse of abortion for which there is no minimum punishment, not threat to accuse of crime punishable with imprisonment for seven years or more: *Reg. v. Popplewell*, 20 O. R. 303.

Section 454 (Accusation of crime). “Offence” includes offences against Provincial law: *The Queen v. Dixon*, 28 N. S. 82.

#### FORGERY.

Section 466 (Definition). Forgery or alteration of municipal assessment roll not indictable: *Reg. v. Preston*, 21 U. C. Q. B. 86.

Filling in drafts signed in blank, without authority and for fraudulent purpose, is forgery: *In re Hoke*, 15 R. L. 92.

Section 467 (Uttering). Notes drawn by boys in play—Attempt to destroy—Finding by prisoner: *Reg. v. Dunlop*, 15 U. C. Q. B. 118.

Knowledge of accused that instrument was forged is essential, and must be stated in indictment—Not necessary to prove intent to defraud any particular person: *The Queen v. Weir*, Q. R. 9 Q. B. 253; *In re Debaum*, 4 L. N. 323.

Section 468, s.-s. r. (Bank note, etc). Alteration of \$2 to \$20: *Reg. v. Bail*, 7 O. R. 228.

\$1 raised to \$5—Alteration—Onus: *Reg. v. Portis*, 40 U. C. Q. B. 214.

Promissory note drawn by prisoner—Alteration after indorsement forgery of note: *Reg. v. Craig*, 7 U. C. C. P. 239.

Filling in drafts signed in blank without authority:  
In re Hoke, 15 R. L. 92.

No conviction on indictment for forging an indorsement where maker had not signed note at the time of forgery: Reg. v. McFee, 13 O. R. 8. Nor on indictment for forgery of note in which blank is left for payee's name: Reg. v. Cormack, 21 O. R. 213.

S.-s. v. Statement from one bank to another containing acknowledgment of receipt of money to be accounted for is an "accountable receipt:" In re Debaum, 11 L. N. 323.

Section 468, s.-s. v. (Security for money). Indictment for uttering forged order for payment of money—Evidence of uttering order with forged indorsement—Conviction quashed: The Queen v. Cunningham, S. C. Dig. 401, revg. 18 N. S. 31.

Orders for payment of money and not mere request: Reg. v. Steel, 13 U. C. C. P. 619; Reg. v. Tuke, 17 U. C. Q. B. 296.

Mere request, not order: Reg. v. Reopelle, 20 U. C. Q. B. 260.

Writing not addressed to any one may be order for payment: Reg. v. Parker, 15 U. C. C. P. 15.

Deed—Power of attorney—Attorney assuming to be principal: Reg. v. Gould, 20 U. C. C. P. 154.

#### FORGERY OF TRADE MARKS.

Section 488 (Trade description). Advertisement "Quadruple plate": Reg. v. T. Eaton Co., 31 O. R. 276.

On indictment for falsely applying trade mark prosecution must show that assent of proprietor of trade mark was not given: The Queen v. Howarth, 1 Can. C. C. 243.

Sub-sec. 2 does not apply to case of falsely applying: *Ib.*

Section 489 (Selling goods falsely marked). Prosecution must be by indictment—Prohibition granted against summary proceeding: Reg. v. T. Eaton Co., 29 O. R. 591.

Resemblance between goods of accused and those of proprietor of trade mark need not be such as to deceive persons making critical examination. It is sufficient if it would deceive an incautious or unwary purchaser: The Queen v. Authier, Q. R. 6 Q. B. 146.

Section 498 (Restraint of trade). By sec. 581, accused may be tried by jury or by judge, at his option.



**ARSON.**

Section 511 (Offence). Remains of dwelling house — Previous fire—Repair—"Building:" Reg. v. Labadie, 32 U. C. Q. B. 429. And see Reg. v. Smith, 14 U. C. Q. B. 546.  
 Intent—Averment—Concealment of murder—Evidence: Reg. v. Greenwood, 23 Q. B. 250; Insurance: Reg. v. Cronin, 36 U. C. Q. B. 342.

Intent—Prisoner's own property—Motive — Insurance: Reg. v. Bryans, 12 U. C. C. P. 161; Reg. v. Cronin, *supra*.

Section 512 (Attempt). Preparing materials—Failure to catch fire—Conviction: Reg. v. Goodman, 22 U. C. C. P. 338.

**WILFUL DAMAGE TO PROPERTY.**

Section 539 (Defined). Bona fide belief of right—Must be good grounds for belief: Reg. v. Davy, 27 Ont. A. R. 508, overruling Reg. v. Bradshaw, 38 U. C. Q. B. 564.

**BANK NOTES, COIN AND COUNTERFEIT MONEY.**

Section 556 (Possessing or making dies). Foreign coin not current in Canada—Possessing dies to counterfeit current silver coin of United States—Not necessary to allege that it was not current: Reg. v. Tierney, 29 U. C. Q. B. 181.

Section 563 (Foreign coin). Indictment for possessing counterfeit coin, each piece resembling a piece of the current coin of the United States of the value of fifty cents and called therein half a dollar—Held bad for not alleging that it resembled some gold or silver coin of the United States: Reg. v. Tierney, 29 U. C. Q. B. 181.

**ADVERTISING COUNTERFEIT MONEY.**

Section 569 (Tokens of value). Offering to purchase genuine bank notes unsigned, believing them to be counterfeit, not the offence of offering to purchase counterfeit tokens of value: Reg. v. Attwood, 20 O. R. 574.

By definition of "counterfeit token of value," in sec. 546 (f), it would now be an offence.

Documents not counterfeits, but so made as to resemble United States government notes, are counterfeit tokens of value under this section: Reg. v. Corey, 33 N. B. 81.

## CONSPIRACY.

**Section 573** (To commit indictable offence). To bribe member of legislature—Common law offence—Contempt: *Reg. v. Bunting*, 7 O. R. 524.

To procure by fraud return of member to legislature—Not necessary to prove meeting to concert proceedings: *Reg. v. Fellowes*, 19 Q. B. 48.

Members of trade-union conspiring to injure non-unionist workman by depriving him of his employment guilty of indictable offence. What they conspired to do was not for purposes of their trade combination as defined in s. 2 (38): *Reg. v. Gibson*, 16 O. R. 704.

To rob—Withdrawal of one conspirator who was willing to share in profits—No attempt to prevent crime—King's evidence: *Rex. v. Harris*, S. C. Dig. 405.

As to what constitutes conspiracy: See *Reg. v. Downie*, 13 R. L. 429.

Conspiracy to deprive person of proper care and nursing whereby his death was caused not a conspiracy to commit indictable offence: *Rex. v. Goodfellow*, 11 Ont. L. R. 359. Nor conspiracy to effect cure by unlawful means, thereby causing death: *Ib.*

## PROCEDURE.

**Section 577** (Jurisdiction of courts). Provisional judicial district—Commission to judge to hold court of oyer and terminer—Royal prerogative: *Reg. v. Ames*, 42 U. C. Q. B. 391.

**Section 583** (Inferior courts). *Quære*. Is provision as to county courts in New Brunswick intra vires? *Ex parte Wright*, 34 N. B. 127.

## JURISDICTION.

**Section 584** (Special). Offence begun in one, and completed in another district: *The Queen v. Hogle*, Q. R. 5 Q. B. 59.

If commenced in one province and completed in another it may be tried in either. *Ex parte Gillespie*, Q. R. 7 Q. B. 422: *The Queen v. Gillespie*, Q. R. 8 Q. B. 8.

**Section 585** (Unorganized districts). Offences on great inland lakes are as though committed on high seas. Any magistrate may inquire into an offence committed on one of said lakes, even in American waters: *Reg. v. Sharp*, 5 Ont. P. R. 135.

## SPECIAL PROCEDURE.

Section 602 (Nova Scotia). In Nova Scotia an indictment need not have the words "a true bill" indorsed thereon: *The Queen v. Townshend*, 28 N. S. 468.

Nor need the names of witnesses examined before the grand jury be initialled by the foreman, under sec. 876: *Ib.*

## SPECIAL POWERS.

Section 641 (Search in gaming house). Report need not come from officer having exact title of chief or deputy chief constable—May be from one exercising duties and functions of such officer, as the deputy high constable of Montreal, and even though he was only deputy *de facto* and not *de jure*: *O'Neill v. Atty.-Gen. of Canada*, 26 S. C. 122.

## PROCEDURE BEFORE JUSTICE.

Section 673 (Warrant for witness). Right to search and confine in cell: *Gordon v. Denison*, 22 Ont. A. R. 315, rev'g 24 O. R. 576.

Section 678 (Refusal to be examined). Question must be relevant to issue: *In re Ayotte*, 15 Man. 156.

Section 682 (Evidence). Reading and signing of depositions under sub-sec. 4 is matter of procedure not affecting justice's jurisdiction: *Ex parte Doherty*, 32 N. B. 479.

Section 690 (Commitment). Commitment on Sunday is a nullity: *The Queen v. Cavalier*, 11 Man. 333.

Section 696 (Bail). General rule—Matters to be considered: *Reg. v. Byrnes*, 8 U.C.L.J. 76; *Reg. v. Cox*, 16 O. R. 228; *Reg. v. Mullady*, 4 Ont. P. R. 314; *Ex parte Huot*, 8 Q. L. R. 28; *The King v. Fortier*, Q. R. 13 K. B. 251.

Will generally be refused after true bill for murder: *Reg. v. Keeler*, 7 Ont. P. R. 117; *The Queen v. Murphy, James (N.S.)* 158. But was granted where jury disagreed: *Ex parte Baker*, 3 R. C. 45.

Recognizance—Mode of acknowledgment—Estreat: *In re Talbot's Bail*, 23 O. R. 65.

Ontario rule as to recognizances prior to Criminal Code still in force: *Reg. v. Robinet*, 16 Ont. P. R. 49.

Rescinding order—Fictitious bail—Powers of judge—Terms: *Reg. v. Mason*, 5 Ont. P. R. 125.

Provisions of C. S. L. C., ch. 95, relating to bail in case of felony where trial has been delayed applies in case of all indictable offences under the Criminal Code: *The Queen v. Cameron*, Q. R. 6, Q. B. 158.

Where the conviction of a prisoner on bail is set aside and a new trial ordered he need not appear for sentence pursuant to his recognizance, and the sureties are not bound for his appearance: *The Queen v. Hamilton*, 12 Man. 507.

Section 699 (By Superior Court). Refusal in serious charge where no depositions taken and bail refused by magistrate: *Reg. v. Cox*, 16 O. R. 228.

Section 700 (After committal). Copies of information, etc., certified by county crown attorney and not by committing justice may be received: *Reg. v. Chamberlain*, 1 C. L. J. 157.

#### SUMMARY CONVICTION.

Section 724 (Variance). Though evidence and findings established commission of an offence against the Code, a conviction on a charge not formulated, as to which evidence was not addressed and defendant was not called to make defence, is bad and defendant should be discharged: *Reg. v. Mines*, 25 O. R. 577.

Sections 733-4 (Certificate). Provision that further proceedings shall be barred is *intra vires*: *Flick v. Brisbin*, 26 O. R. 423.

Section 734 (Further proceedings barred). Information for "shooting and wounding with intent, &c."—Justices of their own motion changed it to common assault and convicted—No objection by complainant—As the change was not authorized, certificate of conviction and payment was no bar to action for damages: *Miller v. Lea*, 25 Ont. A. R. 428.

Provision only applies to case tried under sec. 732 without regard to consent: *Nevills v. Ballard*, 1 Can. C. C. 434; 28 O. R. 588.

Section 748 (Keeping peace.) Commitment requiring defendant to furnish sureties must fix the amount: *In re Doe*, Q. R. 2 Q. B. 600.

Warrant of commitment for default in finding sureties must state that complainant feared bodily injury and complaint was not made from malice or ill-will: *The Queen v. McDonald*, 2 Can. C. C. 64.

Section 749 (Appeal). Judge may order issue of subpoena under secs. 676 and 711 to person in another Province to compel attendance on appeal to quarter sessions: *Reg. v. Gillespie*, 16 Ont. P. R. 155.

Section 750 (Appeal). Meaning of "Sittings of the Court"—Appeal from judgment on plea of *autrefois acquit*: *The King v. Bombardier*, 11 Can. C. C. 216.

Sections 750-751 (Costs). Discretion as to costs cannot be reviewed: *Reg. v. McIntosh*, 28 O. R. 603.

#### APPEAL.

Sections 761-9 (Stating case). Magistrate cannot state case for alleged offence against an Ontario statute not involving its constitutionality, as under Ontario legislation there is an appeal to the sessions in such case: *Reg. v. Robert Simpson Co.*, 28 O. R. 231.

Section 762 (Recognizance). Cash deposit cannot be accepted in lieu of recognizance: *The King v. Geiser*, 5 Can. C. C. 154; *The Queen v. Joseph*, Q. R. 11 K. B. 211.

#### SUMMARY TRIAL.

Section 773 (Jurisdiction.) Nature of evidence to prove charge of being inmate of house of ill-fame, sub-sec. (f): *Reg. v. St. Clair*, 27 Ont. A. R. 308; *Rex v. Osberg*, 15 Man. 147.

No appeal to general sessions from conviction under sec. 781 of being such inmate: *Reg. v. Nixon*, 19 C. L. T. Occ. N. 344.

On information for keeping or frequenting house of ill-fame magistrate has option to proceed summarily or commit—*Mandamus* will not lie to compel summary trial: *In re Macrae*, 4 B. C. 18.

Conviction of aggravated assault and payment of fine a bar to civil action: *Hardigan v. Graham*, 1 Can. C. C. 437.

The "disorderly house" mentioned in sub-sec. (f) means a house of the character of a house of ill-fame

or bawdy house. The sub-section does not cover the offence of keeping or frequenting a common gaming house: *The Queen v. France*, Q. R. 7 Q. B. 83.

Offence under sub-sec. (e) can only be tried on consent of prisoner, though sec. 169 makes it punishable on summary conviction: *The Queen v. Crossen*, 12 Man. 571.

Section 777 (Jurisdiction). Section applies in New Brunswick, though there is no court of general sessions there: *In re Vancini*, 34 S. C. 621, 36 N. B. 456.

Section 778 (Consent). After consent, new charge substituted and trial proceeded without fresh consent—Conviction quashed: *Goodman v. Reg.*, 3 O. R. 18.

Section 780 (Conviction). Quashed for imposing penalty of imprisonment for more than six months: *Reg. v. Randolph*, 32 O. R. 212.

Section 781 (Conviction). No appeal to general sessions from conviction for offence against sec. 773 (f): *Reg. v. Nixon*, 19 C. L. T. Occ. N. 344.

Section 792 (Certificate). Certificate of dismissal or conviction under this section does not bar civil proceedings: *Nevills v. Ballard*, 28 O. R. 588.

#### JUVENILE OFFENDER.

Section 802 (Jurisdiction). Conviction need not show that offender was under age of 16: *The Queen v. Brine*, 33 N. S. 43.

#### SPEEDY TRIAL.

Section 823 (Interpretation). Meaning of expression "any judge of a county court": *In re County Courts of British Columbia*, 21 S. C. 446.

County court judge cannot hold speedy trial beyond limits of his territorial jurisdiction without authority from Provincial legislature: *Ib.*

Section 825 (Jurisdiction). Where prisoner is arraigned on two or more distinct charges he is entitled to a separate trial on each: *The Queen v. McBerny*, 29 N. S. 327.

Provisions only apply to "persons committed to gaol for trial"—Where on information for assault the magistrate held accused to bail but neglected to commit

him for trial, a conviction against him was quashed: *The Queen v. Gibson*, 29 N. S. 4; *The Queen v. Smith*, 31 N. S. 411; *Contra, The Queen v. Lawrence*, 5 B. C. 160.

Prisoner was tried on a charge of larceny and acquitted. Prosecuting counsel asked leave to prefer another charge on which prisoner consented to be tried and was convicted. The conviction was quashed as prisoner was not committed for trial on the fresh charge and his consent could not give the judge jurisdiction: *The Queen v. Lonar*, 25 N. S. 124. But see *The Queen v. Brown*, 31 N. S. 401.

**Section 827 (Arraignment).** County court judge's criminal court being a court of record its proceedings cannot be reviewed on habeas corpus: *Reg. v. Murray*, 28 O. R. 549; *Reg. v. St. Denis*, 8 Ont. P. R. 16.

Validity of trial not affected by fact that prisoner was committed for trial and confined in gaol on a void warrant: *Reg. v. Murray*, 28 O. R. 549.

Prisoner on bail may elect for speedy trial after surrender, and, if he does, subsequent indictment against him will be quashed: *Reg. v. Burke*, 24 O. R. 64.

After plea to indictment Judge refused to allow prisoner to be taken before a Judge of Sessions to declare for speedy trial: *The King v. Wener*, Q. R. 12 K. B. 320. And also after indictment found and before plea: *The King v. Komienksy*, Q. R. 12 K. B. 329.

**Section 828 (Election).** Prisoner electing to be tried by jury may abandon election and have speedy trial: *The Queen v. Prevost*, 4 B. C. 326.

He cannot abandon election for speedy trial: *The King v. Keefer*, 5 Can. C. C. 122.

Where prisoner elects for jury trial under mistake, or qualifies his election, sheriff need not notify judge again under sec. 826, or bring prisoner before him to re-elect: *Reg. v. Ballard*, 28 O. R. 489.

#### INDICTMENT.

**Section 852 (Statement of offence).** An indictment for uttering a forged instrument, not stating that accused knew it was forged, is bad, and the defect cannot be corrected: *The Queen v. Weir*, Q. R. 9 Q. B. 253.

Indictment under "Bank Act" for making wilfully false and deceptive statement in a return to Minister of Finance: See *The Queen v. Weir*, Q. R. 8 Q. B. 521.

Section 854 (Alternative statement). Two indictments, one for conspiracy to procure signature to notes, the other for fraudulently inducing person to sign documents. Several offences were not set up in each count: *Reg. v. Burke*, 24 O. R. 64.

Section 855 (Form). Two or more names laid under alias dictus—Not necessary to prove all: *Jacobs v. The Queen*, 16 S. C. 433.

Amendment—Ownership of property: *Reg. v. Jackson*, 19 U. C. C. P. 280.

Intent need not be alleged—Amendment: *Reg. v. Cronin*, 36 U. C. Q. B. 342.

Defect patent on face of indictment—Mode of objection: *Reg. v. Mason*, 22 U. C. C. P. 246.

Wrong owner of property stated: *Reg. v. Quinn*, 29 U. C. Q. B. 158.

Section 856 (Joinder of counts). Theft and previous conviction for lesser offence: *Reg. v. Mason*, 22 U. C. C. P. 246.

Count charging prisoner as citizen of United States with another charging him as British subject—Crown not obliged to elect: *Reg. v. School*, 26 U. C. Q. B. 212.

Section 859 (Particulars). Libel—Innuendo—If defendant does not demand particulars he cannot object to evidence in support of innuendo: *The King v. Molleur*, Q. R. 14 K. B. 556.

Section 871 (Bound over to prosecute). Variance between indictment and committal—Amendment at trial—Prisoner not misled nor prejudiced: *Reg. v. Patterson*, 26 O. R. 656.

Section 876 (Witness). Failure of foreman to initial names does not vitiate indictment: *The Queen v. Townshend*, 28 N. S. 468; *The Queen v. Buchanan*, 12 Man. 190; *Rex v. Holmes*, 9 B. C. 294. Contra, *Belanger v. The King*, Q. R. 12 K. B. 69.

#### PLACE OF TRIAL.

Section 884 (Venue). Committal for one offence—Change of venue—Indictment for two offences—Court may try both: *Reg. v. Coleman*, 30 O. R. 93.

Attempt to procure false affidavit by letter dated in one county and addressed to, and received, in another—Case could be tried in latter: *Reg. v. Clement*, 26 U. C. Q. B. 297.



Change of venue valid without provision for expenses if prisoner pleads and trial proceeds without objection: *In re Sproule*, 12 S. C. 140.

Motion for change refused—It must plainly appear that fair and impartial trial cannot be had without, and mere apprehension, belief and opinion will not justify it: *Reg. v. Ponton*, 18 Ont. P. R. 210.

Where crowd collected around the court house while jury were deliberating and tried to intimidate them and influence them in prisoner's favour, and afterwards made riotous demonstrations against the judge, the venue was changed for a second trial: *Reg. v. Ponton*, 18 Ont. P. R. 429.

Affidavits filed by Crown to show that jury were influenced by conduct of crowd—Affidavits of jurors denying intimidation received in answer: *Ib.*

#### PROCEDURE.

Section 889 (Amendment). Indictment for abduction—Change in name: *Cornwall v. Reg.*, 23 U. C. Q. B. 106. And see *Reg. v. Bissonnette*, 23 L. C. J. 249.

For theft—Amendment as to ownership of property: *Reg. v. Jackson*, 19 U. C. Q. B. 280.

For arson—Averment of intent struck out: *Reg. v. Cronin*, 36 U. C. Q. B. 342.

Amendment allowed of indictment for unlawfully taking and applying property of bank: *Reg. v. Paquet*, 2 L. N. 140.

Section 898 (Objection to indictment). If indictment is held bad on demurrer, judgment is to quash, not to discharge prisoner: *Reg. v. Tierney*, 29 Q. B. 181.

If prisoner on bail elects for speedy trial after surrender, subsequent indictments against him will be quashed without motion or demurrer: *Reg. v. Burke*, 24 O. R. 64.

Section 907 (Autrefois acquit). On indictment for homicide, verdict of coroner's jury of accidental death does not entitle prisoner to plead autrefois acquit: *Reg. v. Labelle*, Q. R. 2 Q. B. 289.

Prisoner indicted as American citizen for levying war, acquitted on proving himself a British subject. On indictment as latter he could not plead autrefois acquit: *Reg. v. Magrath*, 26 U. C. Q. B. 385.

## JURIES.

Section 921 (Qualification). Provision adopting laws of Province not ultra vires: *Reg. v. O'Rourke*, 32 U. C. C. P. 388; 1 O. R. 464.

Qu. Is selection and summoning of juries a matter of procedure, or does it relate to the constitution and organization of criminal courts?

Ontario jury law—Summoning jury—Separation of united counties—Jury de medietate linguæ: *Reg. v. Kennedy*, 26 U. C. Q. B. 326.

Venire facias—Oyer and terminer—General gaol delivery—Ontario Act: *Reg. v. Whelan*, 28 U. C. Q. B. 2.

Section 923 (Mixed juries). After verdict in case tried by mixed jury, it was discovered that one of the French half was not skilled in the French language, and the verdict was set aside: *Reg. v. Chamaillard*, 18 L. C. J. 149.

Where prisoner asked that half of jury be composed of persons speaking language of defence, six jurors speaking that language may be first sworn: *Reg. v. Dougall*, 18 L. C. J. 85. But see *Reg. v. Maguire*, 13 Q. L. R. 99.

Prisoner who applies for mixed jury not bound to divide challenges: *Reg. v. Beaulé*, Q. R. 1 S. C. 273.

And having obtained mixed jury, he has no right to abandon it, but judge may revoke the order: *The Queen v. Sheehan*, Q. R. 6 Q. B. 139.

Section 925 (Challenge to array). That prosecutor was uncle to sheriff who summoned grand jury is good ground for challenge: *Reg. v. Rouleau*, 16 Q. L. R. 322.

Demurrer to challenge overruled—Permission to traverse—Discretion of judge: *Reg. v. Mailloux*, 3 Pugs. (N.B.) 493.

Inclusion of names of unqualified persons not ground for challenge: *Ib.*

Section 932 (Peremptory challenge). Indictment for murder—Juror challenged for cause, but in deference to erroneous ruling of judge at once challenged peremptorily, forms one of the twenty entitled to be so challenged: *Whelan v. Reg.*, 28 U. C. Q. B. 2, 108.

Prisoner who applies for mixed jury on trial for misdemeanour not bound to divide challenges: *Reg. v. Beaulé*, Q. R. 1 S. C. 273.

Peremptory challenge once taken cannot be withdrawn: *The Queen v. Lalonde*, Q. R. 7 Q. B. 201.

Section 933 (Standing aside). Crown not entitled to cause jurors to stand aside a second time when panel is exhausted without obtaining a full jury: *The Queen v. Boyd*, Q. R. 5 Q. B. 1; *Morin v. The Queen*, 18 S. C. 407, overruling *The Queen v. Lacombe*, 13 L. C. J. 259.

Where several persons are jointly indicted and tried Crown has only the number of peremptory challenges allowed on trial of one person: *The Queen v. Lalonde*, Q. R. 7 Q. B. 260.

Section 934 (Defamatory libel). Right of Crown to cause jurors to stand aside in all cases of defamatory libel on individuals as distinguished from seditious or blasphemous libels: *Reg. v. Patteson*, 36 U. C. Q. B. 129.

May be exercised when prosecution conducted by counsel representing Attorney-General: *Ib.*

Section 935 (Challenge for cause). After challenge juror stood aside by consent—Subsequent trial of challenge: *Reg. v. Smith*, 38 U. C. Q. B. 218.

Grounds for challenge: *Reg. v. Chasson*, 3 Pugs. (N.B.) 546.

#### TRIAL.

Section 944 (Summing up). Conspiracy—Evidence called by one defendant only enures to benefit of both, and general reply is with the Crown: *Reg. v. Connolly*, 25 O. R. 151.

Crown prosecutor instructed by Attorney-General of Province has right of reply, though defence calls no witnesses: *The King v. Martin*, 9 Ont. L. R. 218. *The King v. King*, 9 Can. C. C. 426 (N.W.T.).

Section 951 (Counts divisible). On indictment for murder or manslaughter, cannot convict of assault: *Reg. v. Ganes*, 22 U. C. C. P. 185; *Reg. v. Dingman*, 22 U. C. Q. B. 283; *Reg. v. Smith*, 34 U. C. Q. B. 552.

Indictment for shooting with felonious intent—Conviction of common assault: *Reg. v. Cronan*, 24 U. C. C. P. 106.

Prisoner indicted for forgery may be convicted of uttering: *Reg. v. Paxton*, 3 L. C. L. J. 117; 10 L. C. J. 212.

On indictment for house breaking accompanied with theft, prisoner cannot be convicted of receiving stolen goods: *The Queen v. Lamoureux*, Q. R. 10 Q. B. 15.

## EVIDENCE.

Section 982 (Previous conviction). Is certificate of *prima facie* proof of identity? *Reg. v. Edgar*, 15 O. R. 142.

Evidence of, goes to matter of punishment not to general character: *Reg. v. Triganzie*, 15 O. R. 294.

Section 997 (Foreign commission). Order for may be made at any time after information laid and used at any stage—  
—Necessary material—Sworn statement of what witness is expected to prove: *Reg. v. Verral*, 16 Ont. P. R. 444.  
*Affd.* 17 Ont. P. R. 61.

Section 999 (Depositions). Absent witness — Proof of absence: *Reg. v. Nelson*, 1 O. R. 500; *Rex v. Deloe*, 11 Can. C. C. 224.

Coroner's abstract of evidence of witness at inquest, not read to nor signed by latter, not a deposition under this section: *The Queen v. Graham*, Q. R. 8 Q. B. 167.

Section 1002 (Corroboration). Not required by Act—Accomplice—  
—Cautioning jury—Rule of practice: *Reg. v. Andrews*, 12 O. R. 184, following *Reg. v. Beckwith*, 8 U. C. C. P. 274; *Reg. v. Smith*, 38 U. C. Q. B. 218.

Soliciting to steal—Uncorroborated evidence of accomplice—Conviction against direction of judge: *Reg. v. Seddons*, 16 U. C. C. P. 389.

Forgery of prosecutor's name as indorser. Prosecutor denied indorsement and swore that he was a marksman. His son also swore he was a marksman. Held, sufficient corroboration of prosecutor's evidence: *Reg. v. Bannerman*, 43 U. C. Q. B. 547.

Forgery—Evidence of witness that forged documents were written by accused. Proof by same witness that names in a book in same hand as forged documents were written by accused, not sufficient corroboration: *Reg. v. McBride*, 26 O. R. 639.

Admission of girl after she became sixteen that prisoner had connected with her before, is corroborative evidence implicating him in the offence of seduction under s. 217: *The Queen v. Wyse*, 1 Can. C. C. 6.

But evidence of girl's pregnancy, of having been a servant at residence of accused, and of facts showing a strong probability that no other man could have been responsible for her condition, is not corroborative evidence: *The Queen v. Vahey*, 2 Can. C. C. 258.

Seduction under promise of marriage—Evidence of prisoner's declaration to relatives of girl that he had always intended to marry her, is corroborative of her evidence: *Rex v. Daun*, 12 Ont. L. R. 227.

Forgery of indorsements to notes. Parties whose names were forged deny signatures — Sufficient corroboration: *Houle v. The King*, Q. R. 15 K. B. 170.

Section 1010 (Arrest of judgment). Judgment will not be arrested on ground that a juror at the trial had not been returned as such: *Brisebois v. The Queen*, 15 S. C. 421.

#### APPEAL.

Section 1013 (3). "Opinion" means judgment or decision: *Viau v. The Queen*, 29 S. C. 90.

Section 1014 (Case reserved). Judge's right to take a view of premises a question of law that may be reserved: *Reg. v. Petrie*, 20 O. R. 317. But a challenge to the array is not: *Reg. v. O'Rourke*, 32 U. C. C. P. 38. Qu. Right to have jurors stand aside a second time: *Morin v. The Queen*, 18 S. C. 407. Objection to mode of empanelling a jury not a question of law: *Reg. v. Smith*, 38 U. C. Q. B. 218, at p. 235. Nor question as to sufficiency of evidence: *Reg. v. Lloyd*, 19 O. R. 352. Nor sufficiency of indictment on motion to quash: *Reg. v. Gibson*, 16 O. R. 704.

Right of Crown to cause jurors to stand aside in case of defamatory libel may be reserved: *Reg. v. Patteson*, 36 U. C. Q. B. 127.

Judge may reserve though he allowed Crown to exercise right: *Ib.*

Section 1018 (Powers of Court). Where court of appeal directs a new trial, no appeal lies to Supreme Court of Canada: *Viau v. The Queen*, 29 S. C. 90.

Misdirection in murder case: *Reg. v. Brennan*, 27 O. R. 659. In case of forgery: *Rex v. McLean*, 39 N. S. 147. And for improper rejection of evidence: *Reg. v. Brown*, 21 U. C. Q. B. 330.

Section 1021 (New trial). On leave — No appeal to Supreme Court: *Viau v. The Queen*, 29 S. C. 90.

Leave to appeal for new trial only granted when there is absolute failure of evidence to support conviction: *The Queen v. Harris*, Q. R. 7 Q. B. 569.

Failure to challenge a hostile juror not ground for new trial: *Ib.*

Refused where based on failure of jury to regard uncorroborated evidence of accused: *Rex. v. Mallens*, Q. R. 15 K. B. 1.

Section 1024 (To Supreme Court). Reserved case moved for on two grounds—Court of Appeal affirmed refusal with dissent as to one ground only—No appeal to Supreme Court as to other ground: *McIntosh v. The Queen*, 23 S. C. 180.

No appeal from order for new trial: *Viau v. The Queen*, 29 S. C. 90.

Time for serving notice extended after expiration of the 15 days: *Gilbert v. The King*, 38 S. C. 207.

#### PUNISHMENTS, ETC.

Section 1045 (Costs in libel). *Nolle prosequi* entered by Attorney-General is a judgment for defendant who may recover costs from private prosecutor: *The King v. Blackley*, Q. R. 13 K. B. 472..

#### RECOGNIZANCE.

Section 1097 (Default.) No notice of intention to estreat or to produce accused necessary. If necessary it is but a ministerial act and for convenience of parties: *In re McArthur's bail*, 17 C. L. T. Occ. N. 301; 33 C. L. J. 630, sub nom.: *The Queen v. McArthur*.

#### EXTRAORDINARY REMEDIES.

Section 1120 (Legality of imprisonment). Power to enforce order for further proceedings—Order in Ontario for proceedings in Quebec: *Reg. v. Defries*, 25 O. R. 645.

Where conviction was quashed for imposing unauthorized penalty, order for further detention was refused: *Reg. v. Randolph*, 32 O. R. 212.

Section 1122 (Certiorari). Taking writ of certiorari is waiver of right to appeal, but if time for appealing has not expired, opposite party may ask that certiorari be suspended until it has: *Denault v. Robida*, Q. R. 10 S. C. 199.

Section 1130 (Defects cured). Does not cure defective conviction where same infirmity appears in commitment: *Reg. v. Randolph*, 32 O. R. 212.

## LIMITATION.

Section 1142 (Summary conviction). On indictment for rape, prisoner may be convicted of common assault though information not laid within six months from the time offence was committed: *Reg. v. Edwards*, 29 O. R. 451.

*Wrayton v. Naylor*, 24 S. C. 205.

*Picton Bank v. Harvey*, 14 S. C. 617.

# ANNOTATIONS.

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## CHAPTER 150.

### Ticket of Leave.

Section 7. Revocation of license: *Regina v. Johnson*, 37 Can. L. J. 292.



# ANNOTATIONS.

## CHAPTER 152.

### Canada Temperance Act.

#### INTERPRETATION.

Section 1, s.-s. d (County). Means county for municipal, not electoral, purposes: *Reg. v. Shavelear*, 11 O. R. 727. And see *Reg. v. Monteith*, 15 O. R. 290.

Counties united for municipal purposes cannot be said to have a police magistrate, before whom a prosecution under Part III. can be brought, because one of such counties has one: *Reg. v. Abbott*, 15 O. R. 640.

When Act is in force in a county, it is not affected by a portion of such county being made a city by the legislature: *Rex v. McMullen*, 38 N. S. 129; *Ex parte Nagle*, 30 N. B. 77.

#### OBTAINING POLL.

Section 8 (Evidence as to petition). After notice and petition is laid before Secretary of State, with evidence of compliance with statutory requirements, though not submitted to the Governor-in-council, none of the signers of petition can be allowed to withdraw their names therefrom: *In re Canada Temperance Act, 1878 County of Kent, Ont.*, S. C. Dig. 223.

Section 9 (Proclamation). If proclamation issues and election is held court will not, in case of violation of Act, inquire whether or not petition was properly filed under s. 7: *Reg. v. Hicks*, 7 R. & G. (N.S.) 89.

Defective proclamation—Date for bringing Act into force not fixed: *Reg. v. Lyons*, 5 R. & G. 201.

But, held in New Brunswick, that proclamation need not state a particular day for the Act to come into force: *Ex parte Tippet*, 31 N. B. 139.

#### RETURNING OFFICERS.

Section 15 (Qualified voters). Indians on reserve in Ontario cannot vote: *In re Metcalfe*, 17 O. R. 357.

## SCRUTINY.

Section 69 (Proceedings). Judge cannot inquire into corrupt acts at election as an element in deciding whether act is adopted or not: *Chapman v. Rand*, 11 S. C. 312, revg. *Ex parte Rand*, 24 N. B. 374.

And will not be compelled by mandamus to inquire (1) as to personation; (2) bribery; (3) status of voters: *In re Canada Temperance Act*, 12 Ont. A. R. 677, affg. 9 O. R. 154.

Secondary evidence of ballots in lost or stolen ballot boxes is receivable: *Ex parte LeBlanc*, 34 N. B. 88.

Allegation of corrupt practices on application for scrutiny—Parties—Powers of Judge: *Ex parte Boyne*, 22 N. B. 228.

Section 109 (Bringing Act into force). While Act was in force in Portland, N.B., it was united with the city of St. John. It continued in force in part of the latter which was formerly Portland: *Ex parte Nagle*, 30 N. B. 77.

Act may be brought into operation in county where there are no licenses in force at date of order in council: *Ex parte Farrell*, 23 N. B. 467.

## PENALTIES AND PROSECUTIONS.

Section 127 (Sale of liquor). For each offence no greater fine can be imposed than the sum mentioned: *Reg. v. Smith*, 16 O. R. 454. *Contra*: *Reg. v. Cameron*, 15 O. R. 115.

Qu. For third offence can fine of \$100 be imposed as well as imprisonment? *Reg. v. Doyle*, 12 O. R. 347.

Imprisonment properly imposed, though expressed in conviction to be in default of payment of fine: *Rex v. Blank*, 38 N. S. 337.

Section 872, Cr. Code, 1892 (739 present Code), authorizes imprisonment for such default: *Ex parte Casson*, 34 N. B. 331; *contra*, *Reg. v. Ferris*, 18 O. R. 476.

Evidence that liquor was intoxicating—Admissibility—Analyst—Agreement of counsel: *Rex v. Kay*, 37 N. B. 72.

Prosecution must prove Act was in force at time of offence: *Reg. v. Walsh*, 2 O. R. 206; *Reg. v. Elliott*, 12 O. R. 524; *Ex parte White*, 20 N. B. 552.

Under s.-s. 2, principal and agent cannot be separately prosecuted for same offence: *Ex parte Kelly*, 32 N. B. 268, per *Palmer J.*; *Tuck J.*, *contra*.

Partners cannot be jointly convicted: *Ex parte Howard and Crangle*, 25 N. B. 191.

Defendant convicted for sale in shop in his house by his sister, who kept said shop by his permission, he deriving no profit therefrom: *Ex parte McCormack*, 32 N. B. 272. And for sale by employee contrary to his instructions: *Ex parte McKeen*, 32 N. B. 84.

Canteen maintained by infantry school corps not a violation of Act: *Ex parte Patchell*, 34 N. B. 258.

Selling liquor in a social club is: *Ex parte Coulson*, 33 N. B. 341..

Where liquor is sent by express into a county in which Act is in force agent of express company delivering it and collecting charges does not violate Act: *Reg. v. Cahill*, 35 N. B. 240; *Ex parte Trenholme*, 37 C. L. J. 43.

But transfer of liquor in warehouse to person who pays the duty and removes it to his own premises and gives a note for the price is a sale of the liquor: *Reg. v. Morris*, 18 C. L. T. Occ. N. 41.

**Section 128 (Subsequent offences).** No conviction for second or subsequent offence unless there has been prior conviction or convictions for similar offences: *Reg. v. Clark*, 15 O. R. 49.

Conviction for third offence quashed when alleged to have been committed before information and conviction for second: *Rex v. Marsh*, 36 N. B. 186; *Rex v. Swan*, 8 Can. C. C. 86; *Ex parte Robinson*, 5 *Rev. de Jur.* 271.

There cannot be more than one second offence: *Ex parte Wilbur*, 31 N. B. 678; *Ex parte Edwards*, 31 N. B. 118.

**Section 131 (Forum).** Magistrate not disqualified by having been a member of a committee to prosecute offences against the Act and resigning before it came into force: *Reg. v. Klemp*, 10 O. R. 143; *Reg. v. Eli*, 10 O. R. 727.

Nor by vote of sum of money by city council for services in enforcing Act: *Ex parte McCoy*, 33 N. B. 605; And see *Ex parte Grieves*, 29 N. B. 543.

An action pending by accused against magistrate disqualifies: *Ex parte Ryan*, 30 N. B. 256. Or by husband of accused: *Ex parte Gallagher*, 34 N. B. 413.

But the fact that writ was made out but not served before conviction does not: *Rex v. Byron*, 37 N. B. 383.

Justices belonging to temperance alliance which receives fines imposed are disqualified: *Daigneault v. Emerson*, Q. R. 20 S. C. 310.

Magistrates objected to as being notoriously "thorough going Scott Act men," and having stated that

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in no case of conviction would they impose a less fine than \$50. Held, not case of real and substantial bias, and they could lawfully adjudicate: *Reg. v. Klemp*, *supra*. See too *Reg. v. Brown*, 16 O. R. 41; *Ex parte Gorman*, 34 N. B. 397.

Police magistrate not disqualified by being deputy collector of inland revenue: *Reg. v. Dibblee*, 23 N. B. 30; *Ex parte Groves*, 23 N. B. 38.

Jurisdiction—Commission to magistrate for county containing towns entitled to magistrate themselves: *Reg. v. Atkinson*, 15 O. R. 110; *Reg. v. Roe*, 16 O. R. 1; *Reg. v. Clark*, 15 O. R. 49.

Form of commission: *Reg. v. Lee*, 15 O. R. 353; *Rex v. Cahill*, 37 N. B. 18; *Rex v. Townshend*, 39 N. S. 172.

Acting beyond scope of commission: *Reg. v. Beemer*, 15 O. R. 266; *Reg. v. Higgins*, 18 O. R. 148.

Where county having a magistrate is joined with another for municipal purposes, the united counties have not thereby a magistrate: *Reg. v. Abbott*, 15 O. R. 640.

And see *Rex v. Wipper*, 34 N. S. 202; *Rex v. Giovanetti*, 34 N. S. 505.

Section 133 (Two justices). Where presiding justices are subpoenaed as witnesses, and two others take their places, the former are "absent" under s.-s. 2: *Byrne v. Arnold*, S. C. Dig. 747; 24 N. B. 161.

Warrant of commitment by original justices: *Ib.* And see *Reg. v. Sproule*, 14 O. R. 375.

Stipendiary magistrate may sit with another justice: *Reg. v. Graham*, 6 R. & G. (N.S.) 455.

Section 134 (Limitation). Laying of information is commencement of prosecution: *Ex parte Hanagan*, 34 N. B. 577.

Section 135 (Summary conviction). As this section provides a mode of recovering penalties for violation of Part II., s. 929 (now 1038) of the Criminal Code has no application thereto: *Fitzgerald v. McKinley*, S. C. Dig. 224.

Penalties recovered under this section belong wholly to the Crown: *Ib.* Contra: *Reg. v. Klemp*, 10 O. R. 143. And see 49 Vict. c. 48, s. 2 (d). Now Crim. Code, s. 1037.

By order in council in September, 1886, all fines, etc., recovered in an incorporated town separated from the county for municipal purposes shall be paid to the town treasurer. Held, that a town having municipal self-government is entitled to said fines, though con-

tributing to maintenance of certain county institutions: *Town of St. Stephen v. County of Charlotte*, 24 S. C. 329. And see *United Counties of Leeds and Grenville v. Town of Brockville*, 18 Ont. A. R. 548, reversing 17 O. R. 261.

**Section 136 (Search warrant).** Search warrant is good if it follows prescribed form, and if issued by competent authority and valid on its face, will justify officer executing though it may be quashed as defective: *Sleeth v. Hurlbert*, 25 S. C. 620, revg. 27 N. S. 375; *Reg. v. Woodlock*, 29 N. S. 24.

Premises to be searched need not be described by metes and bounds or otherwise: *Ib.*

Warrant cannot issue without information or charge first laid: *Reg. v. Doyle*, 12 O. R. 347; *Reg. v. Hefferman*, 13 O. R. 616.

But may precede prosecution for penalty for unlawfully keeping for sale: *Rex. v. Townshend*, 29 N. S. 189.

Particulars of offence need not be set out in information. *Ib.*

Cannot be issued by one of the justices before whom information is laid: *Reg. v. Walker*, 13 O. R. 83.

Search warrant a process in rem, not a means of obtaining evidence to found or support prosecution: *Ib.*

Information for warrant must show premises to be searched are within jurisdiction of magistrate: *Reg. v. Hurlburt*, 27 N. S. 62.

**Section 137 (Destruction of liquor).** Order for, without information on which to base search warrant, is bad: *Reg. v. Dibblee*, 34 N. B. 1.

**Section 138 (Allegations).** Conviction should allege that Act was in force when offence was committed: *Reg. v. Walsh*, 2 O. R. 206.

**Section 139 (Liquor in premises).** Finding of any of appliances mentioned in section evidence of keeping for sale: *Reg. v. Brady*, 12 O. R. 358.

**Section 143 (Prior conviction).** Omission of magistrate to ask accused if he had been previously convicted does not take away jurisdiction to inquire into such prior conviction: *Reg. v. Wallace*, 4 O. R. 127. Question not necessary if accused represented by counsel: *Rex v. O'Hearon*, 34 N. S. 491.

Magistrate no jurisdiction to inquire as to prior conviction until subsequent offence established: *Reg. v. Edgar*, 15 O. R. 142.

Provisions directory only: *Reg. v. Brown*, 16 O. R. 41; *Contra, Reg. v. Edgar, supra*.

As to proof of prior conviction, see *Reg. v. Kennedy*, 17 O. R. 159; 10 O. R. 396; *Rex v. Byron*, 37 N. B. 83, 383; *Ex parte Dugan*, 32 N. B. 98.

Statement in magistrate's certificate of previous conviction not proof of time first information was laid: *Ex parte Edgar*, 31 N. B. 128.

**Section 145 (Variance).** Between information and evidence—Information for keeping conviction may be for keeping and selling: *Reg. v. Bennett*, 3 O. R. 45.

Conviction must conform to minute of actual adjudication: *Reg. v. Brady*, 12 O. R. 358; *Reg. v. Higgins*, 18 O. R. 148; *Reg. v. Hartley*, 20 O. R. 481.

Information may be amended to substitute another offence for that charged if defendant is present and does not claim to be misled and ask for adjournment: *The King v. Byron*, 37 N. B. 386.

Where by clerical or other error information attached to return gives wrong date of sale, amendment is not required: *Reg. v. Dibblee*, 34 N. B. 1.

**Section 146 (Variance).** Information used expression "disposal" and conviction "sale." No variance—If it is it could be amended: *Reg. v. Hodgins*, 12 O. R. 367.

Section does not authorize reduction of amount of fine imposed in excess of jurisdiction, nor does s. 147: *Reg. v. Porter*, 20 N. S. 352.

Where information charged illegal sale "within three months last past," conviction dated two days later finding defendant guilty of said offence "within three months last past," was quashed: *Ex parte Kennedy*, 27 N. B. 493.

**Section 147 (Amendment).** Conviction varying from minute of adjudication in omitting to provide for "payment of costs and charges of distress," may be amended: *Ex parte Conway*, 31 N. B. 405.

#### CERTIORARI AND APPEAL.

**Section 148 (Appeal).** None to Court of Appeal from judgment quashing conviction on certiorari: *Reg. v. Eli*, 13 Ont. A. R. 526.

Section 150 (Tampering with witnesses). Provision not repealed by s. 154, Cr. Code, 1892 (s. 180 present code), or by any other provision of the code: Reg. v. Gibson, 29 N. S. 88.

In proceedings for penalty proof of information laid and summons issued for violation of Act, and that party tampered with was summoned as witness on hearing of information is sufficient—Proof of conviction of offence charged not necessary: *Ex parte White*, 30 N. B. 12.

Form of conviction on such prosecution: *Ib.*

# ANNOTATIONS.

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## CHAPTER 153.

### Lord's Day Act.

This legislation held intra vires of the Parliament of Canada: Re Sunday Legislation, 35 Can. S. C. R. 581.



# ANNOTATIONS.

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## CHAPTER 155.

### Extradition Act.

#### UNDER TREATY.

Section 9 (Judges). All Judges "of the County Courts" includes Junior County Court Judges of Ontario: In re Garbutt, 21 O. R. 179, 465.

County Court Judge has jurisdiction in any part of his province: In re Parker, 10 C. L. T. Occ. N. 373. And also commissioner: In re Greene and Gaynor, Q. R. 22 S. C. 91.

Warrant issued by extradition commissioner for arrest of fugitive in another province is void: Ex parte Seitz, Q. R. 8 Q. B. 345.

Section 10 (Warrant). Sub-section 2 directory only. Neglect to forward report to minister no ground for prisoner's discharge: In re Garbutt, 21 O. R. 179.

Information gave wrong christian name of indorser of instrument for forgery, of which extradition was demanded. Under s. 669, Cr. Code, warrant was not avoided: See s. 13 infra, In re Garbutt, 21 O. R. 179.

Proceedings may be instituted in Canada. Warrant in country demanding extradition not essential: In re Garbutt, 21 O. R. 465; In re Lazier, 30 O. R. 419; 26 Ont. A. R. 260; In re Caldwell, 5 Ont. P. R. 217.

Form of information for forgery: In re Lee, 5 O. R. 583.

Warrant can issue only on proof of foreign warrant or on information or complaint laid before the Judge. Where issued on proof of foreign indictment and bench warrant prisoner was discharged: In re Bongard, 5 N. W. T. 10.

Under treaty with United States, crime charged need not be offence against federal law. If under law of Canada and demanding State it is a crime, and within treaties, extradition may be ordered: In re Lorenz, 9 Can. C. C. 158 Que.

**Section 13 (Hearing).** Mistake in information of christian name of indorser of instrument for forgery, of which extradition is demanded, does not avoid warrant. See Cr. Code, s. 609: *In re Garbutt*, 21 O. R. 179.

\* Nor variance between information and warrant of committal: *Greene v. Vallée*, Q. R. 14 K. B. 261.

General right of accused to call witnesses for his defence, and to prove that the crime charged is not extraditable: *In re Phipps*, 8 Ont. A. R. 77, affirming 1 O. R. 586; *Ex parte Debaum*, 16 R. L. 612.

Foreign sovereigns and states have right to intervene in cases in Quebec: *In re Greene and Gaynor*, Q. R. 22 S. C. 91.

The prisoner may be remanded to give the prosecution an opportunity of adducing evidence: *United States v. Gaynor*, [1905] A. C. 128, overruling *In re Parker*, 19 O. R. 612.

**Section 15 (Not extraditable).** Evidence that offence is political: *In re Levi*, Q. R. 6 Q. B. 151.

**Section 15 (Evidence).** *Ex parte* affidavits taken abroad: *United States v. Browne*, 11 Can. C. C. 167.

**Section 17 (Authentic depositions).** Examples of depositions duly authenticated: *In re Lee*, 5 O. R. 583; *In re Weir*, 14 O. R. 389; *In re Parker*, 19 O. R. 612; *In re Hoke*, 14 R. L. 705; *Greene v. Vallée*, Q. R. 14 K. B. 261.

Depositions need not be taken in presence of accused: *In re Parker*, *In re Hoke*. And the depositions and statements admissible are not confined to those made in respect to the charge on which the original warrant issued: *In re Weir*.

Governor of a State in United States not a "Minister of the foreign State" under s.-s. (b): *Ex parte Cadby*, 26 N. B. 452. The clerk of a State Court of criminal jurisdiction is, and also the State Attorney for the county in which charge was laid: *In re Lewis*, 9 Can. C. C. 233 (N. W. T.).

**Section 18 (Evidence).** Committal for forging tickets of admission to entertainment. Depositions raised strong suspicion of commission of forgery of some document, but neither a genuine ticket nor one alleged to be forged was produced. Prisoner was discharged for want of evidence: *In re Harsha*, 11 Ont. L. R. 494. See *In re Parker*, 19 O. R. 612.

If prisoner is discharged for want of evidence, he may be arrested again when further evidence is discovered: Doctrine of *res judicata* or former jeopardy or *autrefois acquit* inapplicable to such inquiry: *In re Harsha*, 11 Ont. L. R. 457.

If identity of prisoner with person named in warrant is proved, evidence to show alibi cannot be received: *In re Garbutt*, 21 O. R. 179, 465.

Evidence of foreign indictment not admissible: *Reg. v. Browne*, 31 U. C. C. P. 484; 6 Ont. A. R. 386; *Reg. v. Hovey*, 8 Ont. P. R. 345; *In re Rosenbaum*, 18 L. C. J. 200; *Ex parte Eno*, 10 Q. L. R. 194.

Prisoner was held for extradition, though offence was described as larceny, which is not known to the *Crim. Code*: *In re Gross*, 25 Ont. A. R. 83; *In re Martin*, 17 C. L. T. Occ. N. 131.

Charge may be established by evidence of accomplices: *In re Caldwell*, 5 Ont. P. R. 217.

Warrant of committal should state that Judge deems evidence sufficient to justify a committal for trial if crime had been committed in Canada: *Ex parte Zink*, 6 Q. L. R. 260.

Convicted fugitive—Judge on habeas corpus cannot examine evidence given at trial—Must only see if offence is extraditable, and that a regular conviction and identity of prisoner are proved: *In re Levi*, Q. R. 6 Q. B. 151.

Where the charge is conspiracy, which is not extraditable, and acts of theft (which is extraditable) as overt acts of the conspiracy, the demanding country may treat the latter as independent acts of larceny for purposes of extradition; *United States v. Gaynor*, [1905] A. C. 128, at p. 137.

Proof of conviction of conspiracy to defraud does not warrant commitment for fraud itself: *United States v. Browne*, 11 Can. C. C. 161.

Section 23 (Delay). Superior Court Judge on habeas corpus and certiorari, may review the decision of the extradition judge on the evidence: *In re Warner*, 1 C. L. J. 16; *In re Burley*, 1 C. L. J. 34; *Reg. v. Read*, 4 Ont. P. R. 281. *Contra*: *Greene v. Vallée*, Q. B. 14 K. B. 261.

If discharged on habeas corpus, upon merits of charge, prisoner cannot be arrested on new warrant charging same offence: *Ex parte Eno*, 10 Q. L. R. 173. Otherwise if discharged because warrant of arrest issued without jurisdiction: *Ex parte Seitz*, Q. R. 8 Q. B. 392.

On habeas corpus issued before committal only jurisdiction of Judge or commissioner can be inquired into: *In re Greene and Gaynor*, Q. R. 22 S. C. 91. If after committal whole proceedings may be reviewed: *Ib.*

Rescission of writ—When second writ may issue—Abandonment of proceedings—Chose jugée—Auxiliary writ of certiorari: *Ex parte Gaynor*, Q. R. 22 S. C. 109.

Section 32 (Surrender by foreign state). Prosecution for offence prior to surrender—Washington Treaty—Contravention of terms: *Reg. v. Waddell*, 25 N. B. 93.

First Sch. No. 25 (Parties). Accessory before the fact is liable to extradition, but not an accessory after: *Reg. v. Brown*, 6 Ont. A. R. 386; 31 U. C. C. P. 484.

Sch. 2, Form 2 (Warrant of committal). See *Greene v. Vallée*, Q. R. 14 K. B. 261; *Ex parte Lanctot*, Q. R. 5 Q. B. 422.

# ANNOTATIONS.

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## APPENDIX III.

### BRITISH NORTH AMERICA ACT.

Sections 5, 6, and 7 (Provinces and boundaries). Houston, Constitutional Documents of Canada, p. 271.

Section 9 (Executive power). The Governor-General in Dominion matters, and the Lieutenant-Governor in provincial matters, represent the King: Attorney-General of Canada v. Attorney-General of Ontario, 23 Can. S. C. R. 458; Liquidators of the Maritime Bank v. Receiver-General (1892), A. C. 437.

Section 12 (Executive Government). Todd's Parliamentary Government in the British Colonies, pp. 76-125 and 251-274.

Section 18 (Privileges of Parliament). Old section repealed and new section substituted by 38-39 V. c. 38.

Independence of the provincial legislatures from outside interference is a proper subject of provincial legislation: Fielding v. Thomas (1896), A. C. at p. 610.

Section 21 (Number of Senators). Original number increased: Manitoba, R. S. C. c. 12; British Columbia, 35 V., p. lxxxviii; Alberta, 4 & 5 Edw. VII. c. 3; Saskatchewan, 4 & 5 Edw. VII. c. 42; Todd's Parliamentary Government in the British Colonies, pages 164-165.

Section 31 (Disqualification of Senators). Construction to be placed upon s.-s. (1): Attorney-General of Queensland v. Gibbon, 12 App. Cas. 442.

Section 51 (Representation in the House of Commons). Basis of adjustment—Re Representation in the House of Commons of certain provinces, 33 Can. S. C. R. 475; and re Representation in the House of Commons: Attorney-General of Prince Edward Island v. Attorney-General of Canada, 33 Can. S. C. R. 594; (1905) A. C. 37.

Section 58 (Appointments of Lieutenant-Governors). The act of the Governor-General in Council in making the appoint-

ment is an act of the Crown: *Liquidators of the Maritime Bank v. Receiver-General* (1892), A. C. 437.

**Section 65.** The effect of this section discussed by Ritchie, C.J., in *Attorney-General of Ontario v. Mercer*, 5 Can. S. C. R. 538; by Burton, J., in *The Queen v. St. Catharines Milling Co.*, 13 (Ont.) A. R. 165.

As to the pardoning power (the prerogative power to pardon): *Attorney-General of Canada v. Attorney-General of Ontario*, 23 Can. S. C. R. 458.

See also *Liquidators of the Maritime Bank v. Receiver-General* (1892), A. C. 437.

**Section 70.** Vide last redistribution: 3 Edw. VII. c. 60.

**Section 91.** (Principle of construction applicable to differentiate Provincial from Dominion legislative powers.)

The introductory provisions of s. 91 do not give jurisdiction to the Parliament of Canada to deal with matters which are, in substance, local and provincial, and which do not truly affect the interest of the Dominion as a whole: *Attorney-General of Ontario v. Attorney-General for the Dominion* (1896), A. C. at p. 361.

Vide also *Citizens Ins. Co. v. Parsons*, 7 App. Cas. 96; *Russell v. The Queen*, 7 App. Cas. 829; *Bank of Toronto v. Lambe*, 12 App. Cas. 575.

To determine whether a subject falls under s. 91 or 92, the proper rule is to inquire what is the main substance of the Act. If there are a number of objects, that must be taken which was the main object to accomplish: *Attorney-General of Ontario v. Attorney-General of the Dominion* (1896), A. C. 348.

There can be a domain in which provincial and Dominion legislation may overlap, in which case neither legislation will be ultra vires if the field is clear. If the field is not clear, and in such a domain the two legislations meet, the Dominion legislation must prevail: *Grand Trunk Ry. of Canada v. Attorney-General of Canada*, Privy Council, November 5, 1906; not yet reported.

Peace, order and good government: *Russell v. The Queen*, 7 App. Cas. at pages 838 and 839; *Hodge v. The Queen*, 9 App. Cas. 117; *Re Railway Act Amendment*, 1904, 36 Can. S. C. R. 136; 46 *Canadian Gazette*, 208; 48 *Canadian Gazette*, 159; *Riel v. The Queen*, 10 App. Cas. 675; *Attorney-General of Canada v. Cain* (1906), A. C. 542.

Section 91 (2) (Regulation of Trade and Commerce). Regulation implies continued existence of that which is to be regulated, and not its prohibition and prevention: *City of Toronto v. Virgo* (1896), A. C. at page 93; *Attorney-General of Ontario v. Attorney-General of the Dominion* (1896), A. C. at page 363.

“Regulations of trade and commerce” includes political arrangements in regard to trade requiring the sanction of Parliament, regulation of trade in matters of interprovincial concern, and it may be that they would include general regulation of trade affecting the whole Dominion: *Citizens Ins. Co. v. Parsons*, 7 App. Cas. at p. 112; further discussed in *Attorney-General of Ontario v. Attorney-General of the Dominion* (1896), A. C. at page 363.

Police or municipal regulations of a merely local character do not conflict with the general regulations of trade and commerce which belong to the Dominion Parliament: *Hodge v. The Queen*, 9 App. Cas. at page 131.

Section 91 (3) (The raising of money by any mode or system of taxation). The Act contains internal evidence that the double power of taxation, Dominion and provincial, was not considered inconvenient or absurd: *Severn v. The Queen*, 2 Can. S. C. R. at p. 111.

This sub-section includes the power of imposing a tax by way of license: *Attorney-General of Canada v. Attorney-General of Ontario, Quebec and Nova Scotia* (1898), A. C. at p. 713.

Section 91 (8) (The fixing of and providing for the salaries and allowances of civil and other officers of the Government of Canada). The provincial legislature cannot impose a tax upon the official income of an officer of the Dominion Government or confer such a power on the municipalities: *Leprohon v. City of Ottawa*, 2 (Ont.) A. R. 522; vide also *Desjardins v. Quebec*, 18 Que. S. C. R. 434, but see *Webb v. Outtrim*, 23 T. L. R. p. 147.

Section 91 (10) (Navigation and shipping). The Dominion Parliament has power to constitute a maritime court: *In re Picton*, 4 Can. S. C. R. 648.

Navigation and shipping does not include the right to authorize the erection of booms for securing lumber in the rivers of a province: *McMillan v. South West Boom Co.*, 1 P. & B. 715; *McCaffrey v. Hall*, 35 L. C. J. 38.

But an Act incorporating a boom company, with power to obstruct by piers and booms a public tidal and navigable river, held ultra vires of the provincial legislature: *Queddy River Boom Co. v. Davidson*, 10 Can. S. C. R. 222; vide also in re Provincial Fisheries, 26 Can. S. C. R. 444.

A provincial Act incorporating a navigation company, the operations of which were limited to the province, was held intra vires; *MacDougall v. Union Navigation Co.*, 21 L. C. J. 63; See also *Union Navigation Co. v. Couillard*, 7 R. L. 215; *Re Lake Winnipeg Transportation, Lumber & Trading Co.*, 7 M. R. 255; *Longueuil Nav. Co. v. City of Montreal*, M. L. R. 3 Q. B. 172.

As to Dominion legislation affecting provisions of the Merchants Shipping Act, vide *Lefroy, Legislative Power in Canada*, p. 642; See also *Holmes v. Temple*, 8 Q. L. R. 351; *The Royal*, 9 Q. L. R. 148.

In this connection see also *Smiles v. Belford*, 1 (Ont.) A. R. 436.

As to bridges over navigable waters, vide *Lefroy, Legislative Power in Canada*, at p. 634.

**Section 91 (12) (Sea coast and inland fisheries).** This section does not convey to the Dominion any proprietary rights in fisheries, or fishing rights, although the legislative jurisdiction conferred enables the Dominion to affect those rights to an unlimited extent short of transferring them to others: *Attorney General of Canada v. Attorney-General of Ontario, Quebec and Nova Scotia* (1898), A. C. 700.

**Section 91 (13) (Ferries).** The Parliament of Canada has power to authorize the Governor-General in Council to establish or create ferries between a province and any British or foreign country, or between two provinces, and the Governor-General in Council may confer an exclusive license to any such ferry: *Re International and Interprovincial Ferries*, 36 Can. S. C. R. 206.

**Section 91 (15) (Banking).** A provincial tax imposed upon banks which carry on business within the province is intra vires, and does not interfere with the Dominion power of making laws on the subject of banking: *Bank of Toronto v. Lambe*, 12 App. Cas. at p. 586.

The B. N. A. Act gives to the Parliament of Canada power to legislate over every transaction within the legitimate business of a banker, notwithstanding that the exercise of such power interferes with pro-



perty and civil rights in a province: *Tennant v. Union Bank of Canada* (1894), A. C. 31.

The provincial Act imposing a tax on Dominion notes held by a bank, as part of its cash reserve, was held *intra vires*: *Windsor v. Commercial Bank of Windsor*, 3 R. & G. 420.

**Section 91 (19) (Interest).** Interest here means interest in connection with debts originating in contract and does not include a percentage increase on overdue taxes: *Lynch v. The Canada North West Co.*, 19 Can. S. C. R. 204.

Section 7 of the Interest Act, R. S. C. (1886), c. 127, held to be *intra vires*: *Bradburn v. Edinburgh Life*, 5 O. L. R. 657.

**Section 91 (21) (Bankruptcy and Insolvency).** A provincial Act which provided that judgments and executions not completely executed by payment should be postponed in cases of voluntary assignments by insolvent persons, is merely ancillary to bankruptcy law, and is *intra vires* so long as it does not conflict with any existing bankruptcy legislation of the Dominion Parliament: *Attorney-General of Ontario v. Attorney-General of the Dominion* (1894), A. C. 189.

See also *Kinney v. Dudman*, 2 R. & C. 19.

The B. N. A. Act, in assigning to the Dominion Parliament the subjects of bankruptcy and insolvency, intended to confer on it legislative power to interfere with property and civil rights and procedure within the province, so far as a general law relating to these subjects might affect them: *Cushing v. Dupuys*, 5 App. Cas. at p. 415.

A provincial Act for the relief of a benefit and benevolent society in a state of financial embarrassment, was held to be *intra vires*: *L'Union St. Jacques v. Delisle*, L. R. 6 P. C. 31.

A Dominion Act providing for the winding-up of a bank and for the adjustment and settlement of creditors' claims, was held *intra vires*: *Quirt v. The Queen*, 19 Can. S. C. R. 510.

The Dominion Parliament, under its jurisdiction as to bankruptcy and insolvency, has authority to provide for the compulsory liquidation or winding-up of a company incorporated under a statute of the Imperial Parliament: *Allen v. Hanson*, 18 Can. S. C. R. 667.

And also a company incorporated by a provincial legislature: *Shoolbred v. Clark*, 17 Can. S. C. R. 265.

Section 91 (23) (Copyrights). A British copyright, when once it exists, extends over every part of the British dominions: *Routledge v. Low*, L. R. 3 H. L. 100.

The Parliament of Canada has no greater power to deal with the subject of copyright than was possessed by provincial legislatures prior to Confederation, and the Imperial Copyright Act is in force in Canada: *Smiles v. Belford*, 1 (Ont.) A. R. 436.

Vide also *Imperial Book Co. v. Black*, 35 Can. S. C. R. 488.

Section 17 of the Imperial Copyright Act is in force in Canada: *Morang v. Publishers' Syndicate*, 32 O. R. 393.

But the Imperial Act, 25-26 V. c. 68, relating to copyright, in works of fine art, does not extend to the colonies: *Graves v. Gorrie*, 3 O. L. R. 697.

Section 91 (24) (Indians). Vide notes to sec. 109.

Section 91 (25) (Naturalization and aliens). An alien coming to a colony, having rights within the colony, is bound as to such rights by the laws of the colony; but as to his rights beyond the colony he cannot be affected by these laws, for the laws of the colony cannot extend beyond its territorial limits: *Low v. Routledge*, L. R. 1 Ch. at p. 46.

A colony having power to make laws for its peace, order and good government, can subject to its tribunals persons who are neither by themselves nor their agents, present in the colony, in actions founded on any contract made or entered into, or wholly or in part to be performed within the colony: *Ashbury v. Ellis* (1893), A. C. 339.

See also *Regina v. Keyn*, 2 Ex. D. at p. 160.

A provincial Act preventing Chinamen from working in coal mines held ultra vires: *Union Colliery Co. v. Bryden* (1899), A. C. 580.

A provincial Act providing that no Japanese should be entitled to vote, was held ultra vires: *Cunningham v. Tomey Homma* (1903), A. C. 151.

The Parliament of Canada has legislative power to expel an alien and deport him to the country from whence he came: *Attorney-General of Canada v. Cain* (1906), A. C. 542.

Section 91 (26) (Marriage and divorce). Secs. 275 and 276 of the Criminal Code respecting the offence of bigamy are intra vires of the Parliament of Canada: *In re Bigamy*, 27 Can. S. C. R. 461.

**Section 91 (27) (Criminal law).** "Criminal law" includes every act or omission which was regarded as criminal by the law of the province when the Union Act was passed, and which was not merely an offence against a by-law of a local authority: *The Queen v. Shaw*, 7 M. R. at p. 518.

The Dominion Parliament and the provincial legislatures may in many cases have the right to legislate from different aspects to prevent and punish similar acts: *The Queen v. Stone*, 23 O. R. 46; *The Queen v. Wason*, 17 (Ont.) A. R. 221; *Pillow v. The City of Montreal*, M. L. R., 1 Q. B. 401.

An Act providing for the administration of criminal justice in the North-West Territories, held *intra vires*: *Riel v. The Queen*, 10 App. Cas. 675.

For what is "procedure in criminal matters" as distinguished from the "constitution, maintenance and organization of provincial courts of criminal jurisdiction" under sec. 92 (14), see *The Queen v. O'Rourke*, 1 O. R. 464; *The Queen v. Provost*, M. L. R. 1 Q. B. 477; *The Queen v. Levinger*, 22 O. R. 690; *The Queen v. Toland*, 22 O. R. 505; *Sproule v. The Queen*, 1 B. C. pt. 2, 219.

A provincial legislature has no power to permit the operation of lotteries: *L'Association St. Jean Baptiste v. Brault*, 30 Can. S. C. R. 598.

With respect to the application of the Evidence Act to offences against provincial law: See *The Queen v. Roddy*, 41 U. C. R. 291, and *The Queen v. Bittle*, 21 O. R. 605.

Laws affixing punishment for non-observance of Sunday are solely within the legislative jurisdiction of the Parliament of Canada: *Attorney-General of Canada v. Hamilton Street Rly.* (1903), A. C., p. 524; *Re Sunday Legislation*, 35 Can. S. C. R. 581.

**Section 91 (29) (Classes of subjects expressly excepted from sec. 92).** A Dominion Act constituting a maritime court of Ontario held *intra vires*: *The Picton*, 4 Can. S. C. R. 648.

A provincial legislature has no power to pass an Act transferring to a new company a Federal railway or to dissolve a Federal company, or to substitute for such a company another governed by and subject to provincial legislation: *Bourgoin v. La Compagnie de Chemin de Fer de Montreal*, 5 App. Cas. 381.

The power to incorporate a navigation company, the operations of which are limited to a particular

province, belongs exclusively to the legislature of such province: *MacDougall v. The Union Navigation Co.*, 21 L. C. J. 63.

Where the subject matter of legislation by the Parliament of Canada, although situate wholly within a province, is obviously beyond the power of the local legislature, there is no necessity for enacting a clause specially declaring the works to be for the general advantage of Canada: *Hewson v. Ontario Power Co.*, 36 Can. S. C. R. 596.

A provincial legislature has no power to regulate the structure of a ditch forming part of the authorized works of a Dominion railway: *C. P. Rly. Co. v. Parish of Notre Dame de Bonsecours* (1899), A. C. 367.

A provincial Act making a railway company responsible for the cattle killed on its railway in the absence of proper fences held ultra vires: *Madden v. Nelson & Fort Sheppard Rly. Co.* (1899), A. C. 626.

A telephone company incorporated by the Parliament of Canada, may, without the consent of a municipal corporation, enter upon its streets and highways for the purpose of its undertaking: *Toronto v. Bell Telephone Co.* (1905), A. C. at p. 52.

The exception from sec. 92 which is enacted by the concluding clause of sec. 91, has no application to any matters which are not specified in the preceding 29 subjects of legislative authority, and only enables the Parliament of Canada to deal with matters local or private when such legislation is necessarily incidental to the exercise of the power conferred upon it by the enumerative heads of sec. 91: *Attorney-General of Ontario v. Attorney-General of the Dominion* (1896), A. C. 348.

Section 92 (Principles of construction applicable to differentiate Provincial from the Dominion legislative powers). See first note to section 91, *supra*.

Section 92 (1) (Amendment to the constitution of a province).

The independence of the provincial legislature from outside interference, its protection and the protection of its members from insult while in the discharge of their duties, are matters which may be classed as part of the constitution of the province, over which the province may legislate: *Fielding v. Thomas* (1896), A. C. at p. 611.

A provincial legislature has the right to determine under sec. 92 (1), what privileges, as distinguished from necessary consequences, shall be attached to natur-

alization: *Cunningham v. Tomey Homma* (1903), A. C. 151.

Section 92 (2) (Direct taxation within the province in order to the raising of a revenue for provincial purposes). This does not apply to stamps imposed by statute on policies of insurance: *Attorney-General of Quebec v. Queen Ins. Co.*, 3 App. Cas. 1090.

And a provincial Act which imposed a duty of ten cents upon every exhibit filed in court also held to be ultra vires: See also *Lamonde v. Lavergne*, R. J. Q. 3, Q. B. 303; *Dulmage v. Douglas*, 4 M. R. 495.

"Direct taxation" means not according to the classification of economists, but in the sense the words are employed in the B. N. A. Act; and a provincial Act imposing certain direct taxes on commercial corporations carrying on business in the province was held intra vires of the provincial legislature: *Bank of Toronto v. Lambe*, 12 App. Cas. 575.

A provincial Act which required every brewer and distiller to obtain a license to sell wholesale within the province, held to be intra vires: *Brewers & Maltsters v. Attorney-General of Ontario* (1897), A. C. 231.

An Act imposing a license fee on every trader doing business in Montreal held intra vires: *Fortier v. Lambe*, 25 Can. S. C. R. 422.

A provincial Act imposing a tax on Dominion notes held by a bank as a portion of its cash reserve, under a Dominion Act relating to banks and banking, held intra vires: *Windsor v. Commercial Bank of Windsor*, 3 R. & G. 420; *Angers v. Queen Ins. Co.*, 21 L. C. J. at p. 81; *Heneker v. Bank of Montreal*, R. J. Q., 7 S. C. at p. 262; *Lambe v. Canadian Bank of Commerce*, 13 R. L. at p. 146.

A provincial legislature cannot impose a tax upon the official income of an officer of the Dominion Government, or confer such a power on municipalities: See note to sec. 91 (8).

But an employee of the Intercolonial Railway is not exempt from performing statute labour imposed by provincial Act: *Fillmore v. Colburn*, 28 N. S. 292.

A provincial Act professedly passed to prevent the evasion by the Chinese of the payment of taxes, held to be ultra vires: *Tai Sing v. Maguire*, 1 B. C. 101.

And see notes 92 (9) and 92 (16).

Section 92 (4) (Establishment and tenure of provincial offices).  
See notes to sec. 92 (14).

Section 92 (8) (Municipal institutions in the province). This section simply gives a provincial legislature the right to create a legal body for the management of municipal affairs: *Attorney-General of Ontario v. Attorney-General of the Dominion* (1896), A. C. at p. 364.

Section 92 (9) (Shop, Saloon, Tavern, Auctioneer, and other licenses). "Other licenses." For the construction to be placed upon these words, see *Russell v. The Queen*, 7 App. Cas. at p. 838; *Severn v. The Queen*, 2 Can. S. C. R. 70; *Molson v. Lambe*, 15 Can. S. C. R. 253; *Jonas v. Marshall*, 20 N. B. 61; *Hamilton Powder Co. v. Lambe*, M. L. R. 1 Q. B. at p. 463; *City of Montreal v. Walker*, M. L. R. 1 Q. B. 472; *Brewers & Maltsters v. Attorney-General of Ontario* (1897), A. C. p. 231.

See notes to 92 (16).

A provincial legislature may impose an obligation to obtain a fishing license in order to raise a revenue for provincial purposes, but this does not derogate from the power of the Dominion Parliament to impose a tax by way of license as a condition of a right to fish: *Attorney-General of the Dominion v. Attorney-General of Ontario, Quebec and Nova Scotia* (1898), A. C. at p. 713.

Vide cases cited under s. 92 (16).

Section 92 (10) (Local works and undertakings). "Local works" includes a navigation company incorporated for provincial purposes: *MacDougall v. Union Nav. Co.*, 1 L. C. J. 63.

Local works excepted from sec. 92 (10): See notes to sec. 91 (29).

Section 92 (13) (Property and civil rights in the Province). There can be a domain in which Provincial and Dominion legislation may overlap, in which case neither legislation will be ultra vires if the field is clear. If the field is not clear, and in such domain the two legislations meet, the Dominion legislation must prevail: *Grand Trunk Ry. Co. v. Attorney-General of Canada*, 46 Canadian Gazette, 208; 48 Canadian Gazette, 159.

A provincial Act which provided that judgments and executions not completely executed by payment should be postponed in cases of voluntary assignments by insolvent persons, was held intra vires: *Attorney-General of Ontario v. Attorney-General of Canada* (1894), A. C. 189.

Legislation relating to aliens. See note to s. 91 (25).

“Civil rights.” These words are sufficiently large to embrace in their fair and ordinary meaning, rights arising from contracts: *Citizens Ins. Co. v. Parsons*, 7 App. Cas. at pp. 109-111.

The true nature and character of legislation in any particular instance must be determined in order to ascertain the class of subjects to which it really belongs: *Hodge v. The Queen*, 9 App. Cas. at p. 130.

Parliament, in passing the Canada Temperance Act, 1878, was legislating with respect to public order and safety, and not with respect to property and civil rights: *Russell v. The Queen*, 7 App. Cas. at pp. 838 and 839.

In the due exercise of the enumerated powers conferred by s. 91, the Parliament of Canada may incidentally legislate upon matters which are *prima facie* committed exclusively to the provincial legislatures by s. 92: *Attorney-General of Ontario v. Attorney-General of the Dominion* (1896), A. C. at p. 359.

Section 92 (14) (Constitution, maintenance and organization of provincial courts). Vide Lefroy, *Legislative Power in Canada*, pp. 798, 816, sub nom. *Courts and Provincial Powers*. Vide also Houston's *Constitutional Documents*, note, 49, p. 235.

Civil Procedure. Vide *Canada Law Times*, vol. 2, p. 367.

As distinguished from Criminal Procedure: vide Lefroy, note 1, p. 465.

A provincial legislature can provide that a County Judge appointed for one district, may act in another: *In re County Courts of British Columbia*, 21 Can. S. C. R. 446.

And a provincial legislature has the right to make provision for the appointment of police magistrates and justices of the peace: *Reg. v. Bennett*, 1 O. R. 445.

The combined effect of s. 92, s.-ss. 1, 4 and 14, authorize a provincial legislature to empower the Lieutenant-Governor of a province to confer precedence by patents upon such members of the Bar of the province as he may think fit to select: *Attorney-General for Canada v. Attorney-General for Ontario* (1898), A. C. 247.

Section 92 (15). A provincial legislature dealing with property and civil rights must have power to say “thou shalt” or “thou shalt not,” and to fix a penalty to a violation of a statutory enactment: *Reg. v. Wason*, 17 Ont. A. R. 221.

A provincial Act may provide for the imprisonment of a person making default in payment of a sum due on a judgment, where credit has been obtained under false pretences: *Ex parte Ellis*, 1 P. & B. 593.

**Section 92 (16).** The "local option" provisions of the Canada Temperance Act do not make the subject one of a merely local nature: *Russell v. The Queen*, 7 App. Cas. 829.

The provisions of the Liquor License Act, 1877, confer power to make police and municipal regulations, and do not conflict with the regulation of trade and commerce in the provisions of the Canada Temperance Act: *Hodge v. The Queen*, 9 App. Cas. at p. 131.

There are a large number of subjects which are excepted as falling under the denomination of police regulations over which the provincial legislatures have control within their territorial limits, which yet may be legislated upon by the Federal Parliament for the Dominion at large: *Huson v. South Norwich*, 24 Can. S. C. R. at p. 160.

The Manitoba Liquor Act of 1900, dealing with the suppression of the liquor traffic as a matter of a merely local nature in the province, was held *intra vires*: *Attorney-General of Manitoba v. Manitoba License Holders' Association* (1902), A. C. 73.

"Matters of a local or private nature" mentioned at the end of s. 91, does not apply solely to s. 92 (16), but includes all the matters enumerated in s. 92: *Attorney-General of Ontario v. Attorney-General for the Dominion* (1896), A. C. at p. 359.

This sub-section has the same office in s. 92 as the clause relating to peace, order and good government bears to s. 91: *Attorney-General of Ontario v. Attorney-General of the Dominion* (1896), A. C. at p. 365.

**Section 93.** In Manitoba the words "by law," in s. 1, are supplemented by the words "in practice." and it was the intention of Parliament thereby to preserve every legal right or privilege with respect to denominational schools which any class of persons practically enjoyed at the time of the union; but the provincial legislature still had power to abolish denominational schools: *City of Winnipeg v. Barrett* (1892), A. C. at p. 453.

The provisions in the Manitoba Act for an appeal to the Governor-General in council authorize the making of remedial orders by the Governor-General in council: *Brophy v. Attorney-General of Manitoba* (1895), A. C. 202.



Section 95. R. S. O. 1897 c. 254, relating to agriculture, is not in conflict with any Dominion statute in *pari materia*: *Rex v. Horning*, 8 O. L. R. at p. 219.

Section 96. A British Columbia statute authorizing the appointment of a Gold Commissioner having in certain matters the power of a Supreme Court Judge, held to be *ultra vires* and an invasion of the right of the Governor-General in council to appoint judges: *Burk v. Tunstall*, 2 B. C. 12.

Vide also Report of Sir John Thompson, disallowing an Act by the Legislature of the Province of Quebec: *Lefroy*, p. 141.

Section 101. Parliament had the power to pass the Dominion Controverted Elections Act imposing on provincial superior courts the duty of trying Dominion Controverted Election Cases: *Valin v. Langlois*, 3 Can. S. C. R. 1.

Held, that Parliament had power under this section to authorize appeals to the Supreme Court from the Court of Review: *L'Association St. Jean Baptiste v. Brault*, 31 Can. S. C. R. 172.

And also to establish courts with admiralty jurisdiction: *In re Picton, Smith v. Keith*, 4 Can. S. C. R. 648.

Section 102. This section does not include escheats: *Attorney-General v. Mercer*, 8 App. Cas. 767.

Parliament, by virtue of this section, has power to establish and create ferries between a province and any British or foreign country, or between two provinces, and to grant licenses therefor: *In re International and Interprovincial Ferries*, 36 Can. S. C. R. 206.

Section 108. "Public harbour" includes all harbours, together with the bed and soil thereof: *Holman v. Green*, 6 Can. S. C. R. 707.

And the transfer to the Dominion by this section operates on whatever is properly comprised in that term having regard to the circumstances of each case, and is not limited merely to those portions on which public works have been executed: *Attorney-General of Canada v. Attorney-General of Ontario, Quebec and Nova Scotia* (1898), A. C. 700.

This section also authorizes the Dominion Parliament to grant land including the foreshore, which is proved to form part of a public harbour: *Attorney-General of British Columbia v. C. P. R. Co.* (1906), A. C. 204.

Section 109. Treaties with Indians for surrender of lands made before Confederation, provided for possible increased annuities to the Indians, and Canada having paid such increased annuities was held not entitled to recover the same back from the Province: *Ontario v. The Dominion*, 25 Can. S. C. R. 434.

The bed of the St. Lawrence River formed part of the lands belonging to the province of Ontario which, by this section, is declared to belong to the province: *The Queen v. Moss*, 26 Can. S. C. R. at p. 328.

Vide also re Provincial Fisheries, 26 Can. S. C. R. 444; and (1898) A. C. 700.

The title to surrendered Indian lands and minerals is vested in the Crown in right of the province: *Ontario Mining Co. v. Seybold*, 32 Can. S. C. R. 1.

The title to surrendered Indian lands held to belong to the province and not to the Dominion: *St. Catharines Milling Co. v. The Queen*, 14 App. Cas. 46.

"Escheats" are included in the word "Royalties," and belong to the Province and not to the Dominion: *Attorney-General of Ontario v. Mercer*, 8 App. Cas. 767.

A provincial statute providing for the conveyance of lands to the Dominion, does not contemplate that the lands should be taken out of the province, and that the Dominion Government should occupy the position of a freeholder in the province. And "Royalties" in this section includes prerogative rights to gold and silver mines: *Attorney-General of British Columbia v. Attorney-General of Canada*, 14 App. Cas. 295.

The beneficial interest in Indian lands surrendered before Confederation passed to the Provincial Government, together with the liability for certain annuities. Held, that under this section, the beneficial interest in the lands are vested in the province, and that the provision for increased annuities was not so attached to the ceded lands as to form a charge thereon in the hands of the province, and must be paid by the Dominion without recourse to the province: *Attorney-General of Canada v. Attorney-General of Ontario* (1897), A. C. 199.

Section 111. Vide *Attorney-General of Canada v. Attorney-General of Ontario* (1897), A. C. 199. Supra see 109.

The fact that the liability was not presently payable at the date of the passing of the B. N. A. Act, is immaterial: *The Queen v. Yule*, 30 Can. S. C. R. 24.

Section 112. Vide *Attorney-General of Canada v. Attorney-General of Ontario* (1897), A. C. 199. Supra see 109.

Contingent Indian annuities held governed by the next preceding case: *Province of Quebec v. Dominion of Canada*, 30 Can. S. C. R. 151.

Vide also *Dominion of Canada v. Province of Ontario and Quebec*: 24 Can. S. C. R. 498.

Sections 114, 115, 116 and 118. An award by arbitrators providing that the subsidy of the province under s. 118 was payable from July 1st, 1867, with interest on excess of debt should not be deducted until 1st January, 1868, affirmed: *Dominion of Canada v. Province of Ontario and Quebec*: 24 Can. S. C. R. 498.

Section 125. Unpatented lands are not liable to be assessed or sold for taxes: *Ruddell v. Georgeson*, 5 W. L. T. 1.

By charter the lands of the C. P. R. are not subject to taxation until sold or occupied. Held, this included lands which the company had agreed to sell: *Cornwallis v. C. P. R.*, 19 Can. S. C. R. 702.

Query. Whether such lands, after they had been earned and assigned to the C. P. R. by Order in Council, remained exempt from taxation under this section: *North Cypress v. C. P. R.* 35, Can. S. C. R. at p. 565.

Section 126. This section includes escheats: *Attorney-General of Ontario v. Mercer*, 8 App. Cas. 767.

Section 129. The powers conferred by this section to repeal and alter the statutes of the old Parliament of Canada, are precisely co-extensive with the powers of direct legislation with which its bodies are invested by other clauses of the Act: *Dobie v. Temporalities Board*, 7 App. Cas. 136.

Section 132. An Imperial Treaty cannot override the provisions of an Imperial statute: *In re California Fig Syrup Company's Trade Mark*, 40 Ch. D. 620.

The Dominion Parliament, with respect to matters over which it has legislative authority, has plenary powers as large and of the same nature as those of the Imperial Parliament: *Dobie v. Temporalities Board*, 7 App. Cas. 136.

How far the Crown, by prerogative, can bind its subjects by Treaty: Vide *Walker v. Baird* (1892), App. Cas. 491.

Vide also *Tai Sing v. Maguire*, 1 B. C. at p. 109: *Reg. v. Wing Chong*, 1 B. C., pt. 2, at p. 161.

**Section 133.** The English and French versions of the statutes are of equal authority: *Roy v. Davidson*, 15 Que. S. C. 83.

**Section 142.** Discussed in *Ontario v. Dominion of Canada, In re Common School Fund and Lands*, 28 Can. S. C. R. 609.







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